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N. Y. S.







STATE OF NEW YORK

COMMISSION OF HIGHWAYS

THE

Chapter

AS AMENDED  
1913-1914

THE GENERAL  
LAW  
CHAPTER 7

J. B. L.



N. Y. S.







**STATE OF NEW YORK**  
**COMMISSION OF HIGHWAYS**

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**THE HIGHWAY LAW**

**LAWS OF 1909, CHAPTER 30**

**CONSTITUTING**

**Chapter 25 of The Consolidated  
Laws**

**AS AMENDED, ACTS OF LEGISLATURE 1910-1911-1912-  
1913-1914-1915-1916-1917-1918 AND 1919 WITH  
ANNOTATIONS**

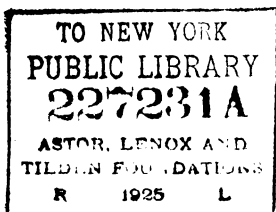
**AND**

**THE GENERAL HIGHWAY TRAFFIC LAW  
LAWS OF 1917, CHAPTER 655  
CHAPTER 70 OF THE CONSOLIDATED LAWS**

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**1919**

**ALBANY  
J. B. LYON COMPANY, PRINTERS  
1919**



# THE HIGHWAY LAW

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*L. 1909, chap. 30.*—AN ACT RELATING TO HIGHWAYS, CONSTITUTING CHAPTER TWENTY-FIVE OF THE CONSOLIDATED LAWS

(In effect February 17, 1909.)

As amended by the Legislatures of 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918 and 1919.

## CHAPTER XXV OF THE CONSOLIDATED LAWS.

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### HIGHWAY LAW.

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- Article      I. Short title and definitions (§§ 1-3).  
              II. Department of highways (§§ 10-25).  
              III. District or county superintendents (§§ 30-33).  
              IV. Town superintendents; general powers and duties (§§ 40-82).  
              V. Highway moneys; state aid (§§ 90-111).  
              VI. State and county highways (§§ 120-160).  
              VI-A. Improvement with Federal Aid (§§ 161-168).  
              VII. Maintenance of state and county highways (§§ 170-180).  
              VIII. Laying out, altering and discontinuing highways; private roads (§§ 190-240).  
              IX. Bridges (§§ 250-269).  
              IX-A. Bridges in certain counties (§§ 269-a-269-j).  
              X. Ferries (§§ 270-274).  
              XI. Motor vehicles (§§ 280-293).  
              XI-A. Motor cycles (§§ 300-310).  
              XII. Miscellaneous provisions (§§ 320-344).  
              XIII. Saving clauses; laws repealed; when to take effect (§§ 350-357).

### ARTICLE I.

#### Short Title and Definitions.

Section 1. Short title.

2. Definitions.

3. Classification of highways.

Section 1. Short title. This chapter shall be known as the "Highway Law."

§ 2. Definitions. 1. The term "department," when used in this chapter, shall mean the department of highways as constituted herein.

2. The terms "commission," "highway commission," and "state highway commission," when so used, shall each mean the state commission of highways. The term "state superintendent of highways," when so used, shall mean the commissioner of highways, and reference to powers and duties of the state superintendent of highways to be exercised subject to the commission shall mean the exercise of such powers and duties by the commissioner of highways without the concurrence of any other commission or officer.

3. The term "district superintendent" or "county superintendent," when so used, shall mean the district superintendent of highways or county superintendent of highways respectively.

4. The term "town superintendent," when so used, shall mean the town superintendent of highways.

5. A highway within the provisions of this chapter shall be deemed to include necessary culverts, sluices, drains, ditches, waterways, embankments, retaining walls and all bridges having a span of five feet or less.

Amended by L. 1911, ch. 646, L. 1912, ch. 83 and L. 1913, ch. 80.

**Sidewalks as part of highway.** A sidewalk is as much a part of the highway as the traveled wagon road. *People v. Meyer*, 26 Misc. 117, 56 N. Y. Supp. 1097, 1099 (1899).

**Private roads.** Provisions are made in this chapter for the laying out of private roads. See Highway Law, §§ 211-226. As to what constitutes a dedication of a private road as a public highway, see Highway Law, § 191.

§ 3. **Classification of highways.** Highways are hereby divided into four classes.

1. State highways are those constructed or improved under this chapter at the sole expense of the state, including those highways specified and described in section one hundred and twenty of the highway law and acts amendatory thereof.

2. County highways are those heretofore or hereafter constructed or improved at the joint expense of state, county and town, as provided by law, except those highways specified and described in section one hundred and twenty of this chapter.

3. County roads are those designated as such under a general or special law and constructed, improved, maintained and repaired by the county as such in counties in which the county road system has been or may be adopted.

4. Town highways are those constructed, improved or maintained by the town with the aid of the state, under the provisions of this chapter, including all highways in towns, outside of incorporated villages constituting separate road districts, which do not belong to either of the three preceding classes.

Amended by L. 1910, ch. 567, L. 1912, ch. 83 and L. 1916, ch. 578.

## ARTICLE II.

### Department of Highways.

Section 10. Department of highways established.

11. State commission of highways; commissioner of highways.
12. Oath of office; undertaking.
13. Principal office; official seal; stationery.
14. Deputy commissioners, secretary and chief auditor of the department.
15. General powers and duties of the commissioner of highways.
16. Division engineers.
17. Duties of division engineers.
18. Salaries and expenses.
19. Appointment of officers, clerks and employees.
20. Blank forms and town accounts.
21. Examination of accounts and records.
22. Condemnation of bridges.
23. Estimate of cost of maintenance of state and county highways.
24. Rules and regulations for state and county highways.
25. Patented material or articles.

§ 10. Department of highways established. There is hereby established a department, to be known as a department of highways, which shall be constituted as provided in this chapter, and shall have the powers and perform the duties hereinafter prescribed.

§ 11. State commission of highways; commissioner of highways. The state commission of highways is continued. Such commission shall consist of a single commissioner, to be known as the commissioner of highways, who shall be the head of the department of highways. Such commissioner shall be appointed by the governor by and with the advice and consent of the senate for a term of five years. He shall devote all of his time to the duties of his office. The governor may remove such commissioner for inefficiency, neglect of duty or misconduct in office. A copy of the charges against him shall be served upon such superintendent and he shall have an opportunity of being publicly heard in person or by counsel in his own defense upon not less than a ten days' notice. If such commissioner shall be removed, the governor shall file in the office of the secretary of state a complete statement of

all charges made against such commissioner and his findings thereon, together with a complete record of the proceedings. The commissioner of highways shall receive an annual salary to be fixed by the governor of not exceeding ten thousand dollars. Wherever by the terms of this chapter or other statute, action by the commission is required to be taken by resolution or in any manner by the concurrence of the members of a majority, such action shall, when the commission consists of a single commissioner, be taken by a formal order of such commissioner entered in the records of the department of highways.

Amended by L. 1911, ch. 646 and L. 1913, ch. 80.

§ 12. **Oath of office; undertaking.** The commissioner of highways shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office and execute an undertaking in the sum of twenty-five thousand dollars, to be approved by and filed with the comptroller and renewed as often as the governor may require. Such undertaking shall be to the effect that he will faithfully discharge the duties of his office and promptly account for and pay over all moneys or property received by him as such commissioner of highways in accordance with law, or in default thereof that the parties executing such undertaking will pay all damages, costs and expenses resulting from such default.

Amended by L. 1911, ch. 646 and L. 1913, ch. 80.

§ 13. **Principal office; official seal; stationery.** The principal office of the department shall be in the city of Albany in rooms provided by the trustees of public buildings. The department shall have an official seal, to be prepared by the secretary of state, as provided by law. The offices of the department shall be supplied with necessary postage, stationery and office furniture and appliances, to be paid for out of moneys appropriated therefor, and it shall have prepared for it by the state, such books and blanks as are required for carrying on the business of the department.

§ 14. **Deputy commissioners, secretary and chief auditor of the department.** The commissioner of highways shall appoint a secretary and chief auditor of the department and three deputy commissioners. Each of the deputy commissioners shall have had practical experience in actual building, construction and maintenance of highways and be familiar with the operation and effect of state statutes relating to highways and bridges. One of such deputies shall be practical civil engineer, to be known as

the first deputy, and his duties shall relate to the plans, specifications and execution of all contracts pertaining to state and county highways; one of such deputies shall be known as the second deputy, and his duties shall relate to the maintenance of state and county highways; one of such deputies shall be known as the third deputy and his duties shall relate to the repair, improvement and maintenance of town highways and bridges, and county roads and roads and bridges on the Indian reservations. The first deputy shall receive an annual salary of six thousand dollars. The second and third deputies and the secretary shall each receive an annual salary of five thousand dollars. The chief auditor shall receive an annual salary of five thousand dollars. Each deputy, the secretary and the chief auditor shall before entering upon the duties of his office each take and subscribe the constitutional oath of office. Each deputy, the secretary and the chief auditor shall each execute an undertaking in the sum of five thousand dollars, to be approved by and filed with the comptroller and renewed as often as the commissioner of highways may require. The commissioner of highways, by order filed in the office of the department, may at any time designate a deputy to sign on behalf of the commission such papers and documents as are specified in such order. The chief auditor shall determine the authorization for and the accuracy of every expenditure of state funds for highway purposes and his report thereon, after approval by the commissioner of highways, shall be transmitted to the comptroller for final audit. Each deputy, the secretary and the chief auditor shall have such other and further duties as the commissioner of highways may determine, and shall each be subject to his direction and control and may be removed by him.

Amended by L. 1911, ch. 646 and L. 1913, ch. 80.

**§ 15. General powers and duties of the commissioner of highways.** The commissioner of highways shall

1. Have general supervision of all highways and bridges which are constructed, improved or maintained in whole or in part by the aid of state moneys.

2. Prescribe rules and regulations not inconsistent with law, fixing the duties of division engineers, resident engineers, district, county and town superintendents in respect to all highways and bridges and determining the method of the construction, improvement or maintenance of such highways and bridges. Such rules and regulations shall, before taking effect, be printed and transmitted to the highway officers affected thereby.

3. Compel compliance with laws, rules and regulations relating to such highways and bridges by highway officers and see that the same are carried into full force and effect.

4. Aid district, county and town superintendents in establishing grades, preparing suitable systems of drainage and advise with them as to the construction, improvement and maintenance of highways and bridges.

5. Cause plans, specifications and estimates to be prepared for the repair and improvement of highways and the construction and repair of bridges, when requested so to do by a district, county or town superintendent.

6. Investigate and determine upon the various methods of road construction adapted to different sections of the state, and as to the best methods of construction and maintenance of highways and bridges.

7. Make an annual report to the legislature on or before February fifteenth stating the condition of the highways and bridges, the progress of the improvement and maintenance of state, county and town highways, the amount of moneys received and expended during the year, upon highways and bridges and in the administration of his office, and also containing such matters as in his judgment should be brought to the attention of the legislature, together with recommendations as to such measures in relation to highways as in his judgment the public interests require.

8. Compile statistics relating to the public highways throughout the state, and collect such information in regard thereto as he shall deem expedient.

9. Cause public meetings to be held at least once each year, in each district or county, for the purpose of furnishing such general information and instructions as may be necessary, regarding the construction, improvement or maintenance of the highways and bridges and the application of the highway law, and the rules and regulations of the department, and also for the purpose of hearing complaints. He shall notify the district or county superintendent of his intention to hold such meeting or meetings, specifying the date and the place thereof.

10. Aid at all times in promoting highway improvement throughout the state, and perform such other duties and have such other powers in respect to highways and bridges as may be imposed or conferred on him by law.

11. Approve and determine the final plans, specifications and estimates for state and county highways upon the receipt of the report and recommendations of the county or district superintendent, as provided herein, and transmit the same in the case of a county highway to the board of supervisors. After the approval of such plans, specifications and estimate by the board of supervisors and the return thereof to the commissioner of highways, in the case of a county highway and after his final determination in respect thereto in the case of a state highway, the commissioner of highways shall cause a contract to be let for the construction or improvement of such state or county highway after due advertisement.

12. Prepare tables showing the total number of miles of highways in the state, by town and county, and file a copy of the same in the office of the comptroller.

13. Divide the state into not more than nine divisions and assign a division engineer to the charge of each, subject to his direction, supervision and control. In making such division no county shall be divided.

14. Make and file with the comptroller a schedule of salaries of all officers, clerks, employees, engineers and superintendents, appointed by him, whose salaries are not fixed by law.

15. Inquire into the official conduct of all subordinates of the department.

16. Direct and cause to be made such repairs of state and county highways as he deems necessary, within the estimates and appropriations made therefor.

Amended by L. 1913, ch. 80.

§ 16. **Division engineers.** The commissioner of highways shall appoint a division engineer for each of the divisions of the state. Each person so appointed as division engineer shall be a practical civil engineer having had actual experience in the construction and maintenance of highways and bridges. The salary of such engineers shall be five thousand dollars per annum. An office may be maintained by such division engineers at a convenient place within each division as authorized by the commissioner of highways. The salary and expenses of such engineers shall be paid out of moneys appropriated therefor upon the requisition of the commissioner of highways. Each division engineer shall, before entering upon the duties of his office, take and subscribe the constitu-

tional oath of office and execute an official undertaking in the sum of ten thousand dollars to be approved by and filed with the comptroller and renewed as often as the commissioner of highways may require. The commissioner of highways, subject to the provisions of the civil service law, may remove such division engineers.

§ 2. Nine thousand dollars (\$9,000) are hereby appropriated from the general funds of the state to become available on July first, nineteen hundred and nineteen, for the purpose of paying the difference in salaries of nine division engineers for the fiscal year ending June thirtieth, nineteen hundred and twenty.

Amended by L. 1911, ch. 646; L. 1913, ch. 80 and L. 1919, ch. 467.

§ 17. Duties of division engineers. Each division engineer shall devote his entire time to the performance of his duties. He shall, under the direction and control of the commissioner of highways:

1. Make or cause to be made all surveys, maps, plans, specifications and estimates necessary or required for the improvement, construction and maintenance of state and county highways within the division for which he is appointed.

2. Examine, revise and approve all plans, specifications and estimates and proposals for the improvement, construction, and maintenance of highways and bridges within his division, which may be submitted by the commissioner of highways, pursuant to the provisions of this chapter, or the rules and regulations of such commissioner.

3. Examine and inspect, or cause to be examined and inspected, the work performed on any highways, and report to the commissioner of highways as to whether the work has been done in accordance with the plans and specifications and contracts made therefor.

4. Approve and certify to the monthly estimates or allowances for work being performed under any contract let for the construction, improvement or maintenance of state and county highways.

5. Inspect, or cause to be inspected, all state and county highways, and report from time to time in respect thereto, when required by the commissioner of highways.

6. Consult with district, county and town superintendents and other highway officers in respect to the proper methods of constructing, improving and maintaining highways and bridges.

7. Perform such other duties as may be prescribed by the commissioner of highways.

8. Have charge of the construction, reconstruction, maintenance and repair of state and county highways in his division, under the supervision of the deputy having jurisdiction thereof.

Amended by L. 1911, ch. 646 and L. 1913, ch. 80.

9. When the corners of the boundaries of counties, cities, villages and subdivision lots of towns shall have been located, as provided in subdivision nine of section thirty-three of this chapter, it shall be the duty of the division engineer to accurately set a monument at such corner, except in cases where the improvement of such highway or road has been completed prior to the location of such corner as provided in such subdivision. Such monument shall be of some durable material and shall be so set that the top thereof shall be on a level with the surface of such improved highway or road. The cost and expense of such monuments and the setting of the same shall be a state charge.

Added by L. 1916, ch. 217.

§ 18. **Salaries and expenses.** All engineers, superintendents, clerks, officers and other employees of the department shall receive the compensation fixed by the commissioner of highways except as otherwise defined and established in this chapter. In the discharge of their official duties the commissioner of highways, deputies, secretary, engineers, and the clerks, officers and other employees of the department shall have reimbursed to them their necessary traveling expenses and disbursements. Such salaries and expenses shall be paid by the state treasurer upon the warrant of the comptroller, out of moneys appropriated therefor in the same manner as the salaries and expenses of other officers, clerks and employees are paid.

Amended by L. 1913, ch. 80.

§ 19. **Appointment of officers, clerks and employees.** The commissioner of highways shall appoint such resident engineers, district superintendents, clerks, officers and employees as may be required to carry out the provisions of this chapter, subject to the civil service laws and the provisions of this chapter, within the amount appropriated therefor, unless the appointment of such clerks, officers or employees is otherwise provided for herein. District superintendents, appointed as provided in this chapter, shall be appointed from lists prepared from examinations which

shall test their qualifications for the actual construction and maintenance of highways and their executive capacity, rather than their scientific attainments. Clerks, other than those employed in the principal office of the commissioner of highways, inspectors and other employees in the department whose duties pertain to the maintenance of highways, shall likewise be selected from lists prepared from examinations testing their general knowledge of the highway law and of the practical construction of highways. Inspectors of construction, other than engineers and levelers, shall be selected from lists similarly prepared, except that they shall be residents of the county within which the highway constructed or improved is located. To the end that the employees of the department of highways engaged in the work of constructing, improving or maintaining highways under the provisions of this chapter may be practical highway builders, the commissioner of highways is authorized to indicate to the civil service commission the relative value which should be given to experience and scientific attainments. The commissioner of highways, subject to the provisions of the civil service law, may remove the resident engineers, district superintendents, clerks, officers and employees of the department.

Amended by L. 1913, ch. 80.

§ 20. **Blank forms and town accounts.** The commissioner of highways shall prescribe and furnish blank forms of orders, reports and accounts and blank books, whenever in his judgment they are required for the convenience of his office and of highway officers.

Amended by L. 1913, ch. 80.

§ 21. **Examination of accounts and records.** The commissioner of highways may, at such times as may be deemed expedient, cause an examination of all accounts and records kept as required by this chapter, and it shall be the duty of all county and town officers to produce all such records and accounts for examination and inspection, at any time on demand of a representative of the commissioner of highways.

Amended by L. 1913, ch. 80.

§ 22. **Condemnation of bridges.** The commissioner of highways shall cause an inspection to be made of any bridge which is reported to be unsafe for public use and travel by the district or county superintendent, the town superintendent, or five residents

of the town. If such bridge is found to be unsafe for public use and travel the commissioner of highways shall condemn such bridge, and notify the district or county superintendent, the town superintendent and the supervisor of the town, of that fact. The district or county superintendent shall either prepare or approve plans, specifications and estimates for the construction or repair of such bridge without delay. The town shall provide for the construction or reconstruction of such bridge, as provided for by section ninety-three of this chapter.

Amended by L. 1913, ch. 80.

§ 23. **Estimate of cost of maintenance of state and county highways.** The commissioner of highways shall annually cause to be inspected all improved state and county highways, either by the division engineer, or the district or county superintendent of the district or county in which such highways are situated and shall require a complete report of such inspection which shall show in detail the condition of the highway inspected, the necessary work to be performed in the repair and maintenance of such highways, and the estimated cost thereof. The commissioner of highways shall revise said estimates and annually report to the legislature his estimated cost of such repair and maintenance for the ensuing year, as so revised, in detail by counties.

Amended by L. 1912, ch. 83 and L. 1913, ch. 80.

§ 24. **Rules and regulations for state and county highways.** The commissioner of highways is hereby empowered to make rules and regulations from time to time for the protection of any state or county highway or section thereof. He may prescribe the width of tires to be used on such highways and he may prohibit the use of chains or armored tires by motor vehicles upon such highways, and any disobedience thereof shall be punishable by a fine of not less than ten dollars and not exceeding one hundred dollars, to be prosecuted for by the town, county, or district superintendent and paid to the county treasurer to the credit of the fund for the maintenance of such highways in the town where such fine is collected.

Amended by L. 1913, ch. 80.

§ 25. **Patented material or articles.** In the construction, maintenance or repair of state or county highways, no patented material or article or any other material or article shall be specified, contracted for or purchased, except under such circumstances that

there can be fair and reasonable opportunity for competition, the conditions to secure which shall be prescribed by the commissioner of highways.

Added by L. 1913, ch. 80.

### ARTICLE III.

#### District or County Superintendents.

Section 30. Appointment of county superintendent.

31. District superintendents; appointment and salaries.

32. Removal of county superintendent.

33. General powers and duties of district or county superintendents.

§ 30. Appointment of county superintendent. The board of supervisors of any county may appoint a county superintendent, determine the amount of the bond which he shall give, fix his salary, and provide for the payment of all the necessary expenses incurred while in the performance of his duties, which salary and expenses, shall be a county charge, and may remove such county superintendent for malfeasance or misfeasance in office, upon written charges, after an opportunity to be heard, not less than five days after the service upon such superintendent of a copy of such charges. The term of office of each superintendent shall be four years unless sooner removed by the board of supervisors as above provided, or by the commission as hereinafter provided.

Amended by L. 1910, ch. 567.

§ 31. District superintendents; appointment and salaries. If the board of supervisors of any county shall fail to appoint a county superintendent, the commission shall appoint a county superintendent from the eligible list of the county, and fix his salary, which, together with his expenses, shall be a county charge, payable monthly, or, in its discretion, place such county in a district with such other counties as they deem best and appoint a district superintendent therefor. A county may be divided, but no district shall contain more than five thousand miles of public highways. Such district superintendents may be removed by the commission at its pleasure. The commission shall fix the salaries of such superintendents. Such salaries, together with expenses, shall be paid monthly in the first instance by the state treasurer upon the warrant of the comptroller and the amount thereof shall be annually apportioned by the commission among the counties contained in the district, in proportion to

the number of miles of public highways of such county and in such district. The comptroller shall certify the amount so apportioned to the board of supervisors of each of such counties, and such board shall annually levy and cause to be collected as a county charge the proportionate part of such salary, and the treasurer of each such county shall pay the sum so raised into the state treasury.

Amended by L. 1910, ch. 224.

§ 32. **Removal of county superintendent.** The commission may remove a county superintendent for inefficiency, neglect of duty or misconduct in office, upon written charges after an opportunity of being publicly heard in his defense. A copy of such charges shall be personally served upon such superintendent and he shall be given not less than five days' notice of the time and place of the hearing. If upon such hearing it appears that the charges are sustained, the commission shall remove such superintendent and forthwith serve notice thereof by mail upon the superintendent and upon the chairman and clerk of the board of supervisors of the county for which he was appointed. Such notice shall state specifically the grounds for such removal. The record of the proceedings upon such hearing shall be filed in the office of the commission. The commission shall appoint a district superintendent for such county or cause it to be added to some other district, and it shall thereupon be made subject to the jurisdiction of the district superintendent thereof until the board of supervisors shall appoint a new county superintendent to fill the vacancy caused by such removal.

Amended by L. 1910, ch. 224.

§ 33. **General powers and duties of district or county superintendents.** The district or county superintendent appointed as provided in this article shall, subject to the rules and regulations of the commission, and subject to the supervision of the state superintendent of highways:

1. Have the general charge of all highways and bridges within his district or county and see that the same are improved, repaired and maintained, as provided by law, and have the general supervision of the work of constructing, improving and repairing bridges and town highways in his district or county.

2. Visit and inspect the highways and bridges in each town of his district or county, at least once in each year and whenever

directed by the commission, and advise and direct the town superintendent how best to repair, maintain and improve such highways and bridges.

2a. If a county has any county roads as defined by subdivision three of section three the county superintendent shall on or before December first in each year prepare and submit to the board of supervisors of such county a statement of the amount necessary to be raised by the board of supervisors for the construction, improvement and maintenance of such county roads for the ensuing year, showing the amount by towns and as a total and the location where any permanent repairs are required to be made.

Added by L. 1910, ch. 567.

3. Examine the various formations and deposits of gravel and stone in his district or county, for the purpose of ascertaining the materials which are best available and suitable for the improvement of highways therein, and when requested by the commission submit samples of such formations and deposits and make a written report in respect thereto.

4. Establish, or cause to be established, such grades, and recommend such means of drainage, repairs and improvements, as seem to him necessary whenever requested by the town superintendent or town board.

5. Approve plans and specifications and estimates for the erection and repair of bridges and the construction and maintenance of town highways.

6. Report to the commission annually, on or before November fifteenth in each year, in relation to the highways and bridges in his district or county, containing such matter and in such form as may be prescribed by the commission, and file a duplicate thereof with the clerk of the board of supervisors. Additional reports shall be made from time to time when required by the commission in respect to such matters as may be specified by them.

7. Whenever a public meeting for a county or district shall have been called by the commission he shall cause due notice to be mailed to each town superintendent and supervisor of the towns under his jurisdiction and give such notice by advertisement as shall be directed by the commission.

8. Inspect or cause to be inspected, if so directed by the board of supervisors, each county highway during its construction or improvement, and certify to the board of supervisors the progress of the work, and report to the commission any irregularities of

the contractor or any failure on his part to comply with the terms of the contract.

9. Accurately ascertain and locate the corners of the established boundaries of counties, towns, cities and villages and, where townships were originally subdivided into lots to accurately ascertain and establish such lot corners if any such corners will be located within the bounds of the improved part of any state or county highway or county road.

If the district or county superintendent shall not be a civil engineer he may hire a competent civil engineer to locate such corners. In either case he may employ such other assistants as may be necessary, the cost and expense thereof to be a county charge.

Nothing in this subdivision contained, however, shall be construed to extend to the location of the corner or other boundaries of city, or village lots, or farm lands, except as they may be, incidentally, the corners of the boundaries of counties, towns, cities, villages or original subdivisions of towns, except, also, that where the corners or boundaries of city or village lots, or farm lands, have been located and a monument placed before the improvement of such highway, the owner of such city or village lots or farm lands may point out to such engineer the location of such monument, and upon such owner furnishing a suitable monument, it shall be the duty of such engineer to erect such monument in the manner heretofore provided.

Added by L. 1916, ch. 217.

10. Perform such other duties as may be prescribed by law, or the rules and regulations of the commission.

Amended by L. 1911, ch. 646.

**Rules and regulations of commission.** It is provided that the powers and duties herein conferred or imposed upon the district or county superintendents shall be exercised or performed subject to rules and regulations of the commission. By § 15, subd. 2, *ante*, the commission is authorized to prescribe rules and regulations fixing the duties of district and county superintendents, "not inconsistent with law."

**Gravel and stone deposits.** The object of requiring county and district superintendents to report to the commission as to deposits and formations of gravel and stone in their counties or districts, is to inform the commission of the availability of good material for highway construction so as to enable them to determine the kind and cost of material to be used in the construction of State and county highways in such localities.

Public meetings are called by the commission pursuant to § 15, subd. 9, *ante*, and town superintendents are required to be present, under § 47, subd. 10, *post*.

## ARTICLE IV.

**Town Superintendent; General Powers and Duties.****Section 40. Election of town superintendent of highways.**

41. Submission of proposition for appointment of town superintendent.
42. Term of office of town superintendent.
43. Vacancies; office of highway commissioner abolished.
44. Deputy town superintendent.
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Section 78. Adoption of labor system for removing snow.

79. Assessment of labor for the removal of snow.

80. Lists of persons assessed for removal of snow.

81. District foremen; return and levy of unworked tax.

82. Appeals by nonresident; certain assessments to be separate; tenant may deduct assessment.

§ 40. Election of town superintendent of highways. At the biennial town meeting held next after the taking effect of this chapter, there shall be elected in each town a town superintendent of highways. A successor to the town superintendent, so elected, shall be elected at each biennial town meeting held thereafter in such town, unless the town shall have adopted as provided in section 41 a resolution that thereafter the town superintendent shall be appointed by the town board.

Every elector of a town is eligible to the office of town superintendent. Town Law, § 80.

A tie vote for a town officer creates a vacancy that may be filled by the town board, the incumbent holding until the town board fills the vacancy.

A town superintendent must be a resident of the town. A town superintendent is required to take constitutional oath of office. The town clerk is to notify the town board of failure of town superintendent to take and file oath of office. The neglect or failure to file oath of office within the required time vacates office.

§ 41. Submission of proposition for appointment or election of town superintendent. Upon the written request of twenty-five taxpayers of any town, made and filed as provided in the town law, the electors thereof may, at a special or biennial town meeting, vote by ballot upon a proposition providing for the appointment of a town superintendent in such town. Such proposition shall be submitted in the manner provided by law for the submission of questions or propositions at a town meeting. If such proposition be adopted, the town board of the town shall, upon the expiration of the term of office of the elected town superintendent, appoint a town superintendent therefor, who shall take and hold office for the term hereinafter prescribed. Upon like request the electors of any town in which the office of superintendent of highways is appointed may, in like manner, determine that the superintendent of highways for such town shall thereafter be elected, as provided in section forty of the highway law.

Amended by L. 1916, ch. 47.

**§ 42. Term of office of town superintendent.** The term of office of a town superintendent elected or appointed, as provided in this article, shall be two years. If such town superintendent be elected at a town meeting held at the time of a general election, his term shall begin on the first day of January succeeding his election. If such town superintendent shall have been elected at a town meeting held at any other time, his term of office shall begin on the first Monday succeeding his election. If such town superintendent shall have been appointed pursuant to a proposition adopted, as provided in the preceding section, his term shall begin on the first day of January succeeding his appointment, and the town board shall meet prior to that day for the appointment of such town superintendent.

Amended by L. 1917, ch. 562, and L. 1918, ch. 372.

**§ 43. Vacancies; office of highway commissioner abolished.** Vacancies in the office of town superintendent shall be filled for the balance of the unexpired term. The office of highway commissioner in each town is hereby abolished, to take effect on and after November first, nineteen hundred and nine. Where the office of highway commissioner shall become vacant by expiration of term or otherwise, after the taking effect of this chapter, and prior to the said first day of November, nineteen hundred and nine, such vacancies shall be filled for a term to expire on such date. Highway commissioners in office when this chapter or any section hereof takes effect shall exercise the powers and perform the duties hereby conferred and imposed upon town superintendents until the said first day of November, nineteen hundred and nine, and until their successors shall have duly qualified, whereupon such powers and duties shall cease and determine.

**§ 44. Deputy town superintendent.** The town board of a town may, in its discretion, upon the written recommendation of the town superintendent, appoint a deputy town superintendent, to be nominated by such town superintendent, to assist him in the performance of his duties. Such deputy superintendent shall act as such during the pleasure of the town superintendent.

**§ 45. Compensation of town superintendent and deputy.** The town board shall fix the compensation of such superintendent and his deputy, if one be appointed, which shall not be less than

two nor more than five dollars per day. Such town superintendent and his deputy, if any, shall be paid the actual and necessary expenses incurred by them in the performance of their duties. Such compensation may be paid by the supervisor monthly, in advance of audit, from moneys levied and collected for such purpose, on accounts duly verified in the same manner as town accounts are required by law to be verified. Such accounts for compensation, together with accounts for expenses incurred by such town superintendent and his deputy, if any, verified as above provided, shall be subject to audit by the town board at its meeting held annually for the audit of accounts of town officers, and the balance due, as finally audited by the town board, shall be paid by the supervisor to such town superintendent, or deputy, if any, from funds available therefor.

**§ 45-a. Compensation of town superintendents in certain counties adjoining cities of the first class.** The town board of any town in a county having a population of two hundred thousand or less, according to the last federal or state census or enumeration, adjoining a city of the first class having a population of one million and upwards, may by resolution provide that the town superintendent of highways shall receive an annual salary of not to exceed twenty-five hundred dollars in lieu of all other compensation. In a town in which such superintendent shall receive a salary as herein provided, the compensation provided for in section one hundred and seventy-five of this chapter for the services of such superintendent shall be paid to the supervisor of the town for the benefit of the town.

Added by L. 1917, ch. 662.

**§ 46. Removal of town superintendent.** A town superintendent may be removed by the town board upon written charges preferred by the commission, or by the district or county superintendent, for malfeasance or misfeasance in office. Such charges shall be presented in duplicate to the town clerk, one of which shall be filed in his office, and the other shall be served by him personally upon the town superintendent, together with a notice directing him to appear before the town board at a time and place stated therein. Such service shall be made at least five days prior to the time specified in such notice. The town board shall convene for the purpose of considering such charges within ten days after

the filing thereof with the town clerk. The town board shall hear evidence in support and in defense of such charges and after such hearing shall enter an order in the office of the town clerk either sustaining or dismissing such charges. The entry of an order sustaining the charges shall operate as a removal and the town board shall appoint another person to fill the vacancy caused thereby. The person so appointed shall hold office for the unexpired term or until the entry of a final order of a court of competent jurisdiction determining that the original town superintendent was wrongfully and illegally removed and directing his reinstatement. If the charges are dismissed, the town board shall notify the commission and the district or county superintendent of such fact. The town board shall also notify the commission and the district or county superintendent of the name of the person appointed to fill the vacancy caused by the removal of such town superintendent. An appeal may be taken by the commission or district or county superintendent, or by the town superintendent, from the order of the town board, to the county court by the filing of a notice of such appeal in the office of the town clerk within thirty days after the entry of such order. A copy of such notice of appeal shall be served personally or by mail upon the adverse party. Upon such appeal the county court shall consider the charges presented to the town board, and may hear evidence in support and in defense thereof. After such hearing the court shall make an order either affirming or reversing the order of the town board. A copy of such order shall be entered in the office of the town clerk. If the order reverse an order dismissing the charges, it shall direct the town board to remove the town superintendent and appoint a person to fill the vacancy caused thereby, within the time specified therein; if it reverse an order sustaining such charges, it shall direct the reinstatement of the town superintendent removed, to take effect upon the filing of the copy in said town clerk's office.

**§ 47. General powers and duties of town superintendent.** The town superintendent shall, subject to the rules and regulations of the commission, made and adopted as provided in this chapter:

1. Have the care and superintendence of the highways and bridges and board walks or renewals thereof on highways less than two rods in width, in the town, except as otherwise specially

provided in relation to incorporated villages, cities and other localities.

2. Cause such highways and bridges and the board walks or renewals thereof on highways less than two rods in width to be kept in repair, and free from obstructions caused by snow and give the necessary directions therefor, and inspect the highways and bridges within the town, during the months of April and October of each year, or at such other time as the district or county superintendent may prescribe; and may cause to be constructed and repaired any public roads, walks, places and avenues on any sand beach separated by more than two miles of water from the main body of his town, although such roads, walks, places and avenues are narrower than the width of highways required by statute. Within the meaning of this section, or of any provision of this chapter referring to a renewal of a board walk on a highway less than two rods in width, the term "renewal" shall include a walk built of other material to replace such board walk.

Amended by L. 1914, ch. 84 and L. 1915, ch. 322.

3. Divide the town into as many sections as may be necessary for the proper maintenance and repair of the highways therein, and the opening of highways obstructed by snow.

Obstructions caused by snow. The duty of keeping highways free from obstructions caused by snow is made by this subdivision as obligatory upon the town superintendent the same as keeping them in repair.

4. Employ such persons with teams and implements, as may be necessary for the proper maintenance and repair of highways and bridges, and the removal of obstructions caused by snow, subject to the approval of the town board, as hereinafter provided, and provide for the organization and supervision of the persons so employed. He shall file a list of the names of the persons so employed, with the compensation paid to each, and the capacity in which they were employed in the office of the town clerk.

Payment of laborers. When an agreement has been entered into between the town board and the town superintendent, as provided in section 105, *post*, authorizing the expenditure of highway moneys at such places and in such manner as may be specified in such agreement, the town superintendent is authorized to employ such labor as may be necessary in making such repairs and improvement, and the wages are to be paid by the supervisor on the written order of the town superintendent.

Weekly or semi-monthly pay days should be established and provision made by the town superintendent and supervisor for the issue and payment of town highway orders upon such day.

5. Construct and keep in repair sluices and culverts and cause the waterways, bridges and culverts to be kept open.

Ditches, culverts and waterways in State and county highways are required to be kept open and free from obstructions at all times, by the town superintendent. See section 53, *post*. It is made unlawful for the owner or occupant of lands adjoining a highway to fill up any ditch or place any material of any kind or character therein so as to in any manner obstruct or interfere with the purposes for which it was made. See section 71, *post*.

6. Cause loose stones lying in the beaten track of every highway within his town to be removed at least three times each year between the first day of April and the first day of December. Stones so removed shall be conveyed to some place from which they shall not work back, or be brought back into the track by road machines or other implements used in repairing such highways.

Injurious substances in highways. A person who willfully throws, drops or places, or causes to be thrown, dropped or placed, upon any road, highway, street or public place, any glass, nails, pieces of metal or other substances which might wound, disable or injure any animal is guilty of a misdemeanor. Penal Law, § 191.

7. Cause noxious weeds growing within the bounds of the highway to be cut and removed, at least twice each year, once between the first and thirtieth day of July, and once between the first and thirtieth day of September. He shall also cause all briars and brush within the bounds of the highway to be cut and removed once between the first and thirtieth day of September in each year, as provided by section fifty-four of this chapter, unless otherwise directed by the commission.

Subd. 7, amended by L. 1910, ch. 567. In effect June 21, 1910.

8. Cause such highways as shall have been laid out, but not sufficiently described, and such as shall have been used for twenty years, but not recorded, to be ascertained, described and entered on record in the town clerk's office.

9. Inspect all highways which are to be constructed or improved as state or county highways, when directed by the district or county superintendent, for the purpose of securing preliminary information to be used in preparing the plans and specifications for such highways, and mark or in some substantial manner designate the portions of such highways which may need special care and attention. He shall report to the district or county

superintendent the condition of such highways and submit therewith such recommendations in respect thereto as may seem expedient. The district or county superintendent may require additional reports in respect to such highways whenever it seems to him to be necessary.

10. Attend public meetings called by the commission, held within the county, after receiving notice thereof from the district or county superintendent, and his expenses necessarily incurred thereby shall be a town charge.

11. Cause the monuments erected, or to be erected, as the boundaries of highways, to be kept up and renewed so that the extent of such highway boundaries may be publicly known, and erect and establish such new monuments as may be required by the district or county superintendent.

12. Collect all penalties prescribed by this chapter.

13. Report annually on such date as may be prescribed by the commission, prior to November fifteenth, to the district or county superintendent, in relation to the highways and bridges in his town, containing the matter and in the form to be prescribed by the commission.

14. Perform such other duties and have such other powers as may be imposed or conferred by law, or the rules and regulations of the commission, including the powers and duties heretofore exercised or performed by highway commissioners.

See Attorney-General's Report, 1911, page 325.

§ 48. **Contracts for the construction of town highways.** The town board of any town may provide that the construction of new highways and bridges, or the permanent improvement or reconstruction of existing highways and bridges or repairing, rebuilding or replacing walks on highways less than two rods in width pursuant to the provisions of sections forty-seven, sixty-two and ninety-seven of this chapter, the cost of which will exceed five hundred dollars, shall be done under contracts. All such contracts shall be awarded by the town superintendent, in accordance with estimates, plans and specifications to be furnished by the district or county superintendent, or by the commission, as provided in this chapter, to the lowest responsible bidders, after advertisement once a week, for three consecutive weeks, in a newspaper published in the town where the work is to be performed, or if no newspaper is published therein, in a newspaper published at some other place

in the county, having the largest circulation in said town. All bids for such work shall be opened in public and shall be filed in the office of the town clerk. No such contract shall be awarded, unless it be approved by the district or county superintendent, as to its form and efficiency. The person to whom such contract is awarded shall execute a bond to the town, in a sum equal to one-half of the amount of the contract, with two or more sureties to be approved by the town board, conditioned for the faithful compliance with the terms of the contract, and the plans and specifications and for payment of all damages which may accrue to the town, because of a violation thereof. When such work is completed pursuant to the terms of such contract, and the plans and specifications therefor, and accepted by the district or county superintendent and town board, as being in accordance therewith, the cost of the work under the contract shall be paid out of moneys available therefor, in the same manner as other highway expenses. Payments made under such contract shall be upon certificates issued to the contractor by the district or county superintendent, to the effect that the work has been done under and in accordance with the terms of such contract, and the plans and specifications. All work done under any such contract shall be under the supervision of the district or county superintendent, or some person designated by him. The town superintendent shall file all contracts, awarded under this section or as provided in this chapter, for the construction, improvement or repair of town highways and bridges, or for repairing, rebuilding or replacing a walk, with the town clerk of the town within ten days after their execution.

Amended by L. 1913, ch. 621; L. 1914, ch. 413; L. 1915, ch. 322 and L. 1916, ch. 578.

Section 105 provides that the town board and the town superintendent shall constitute a board for the purpose of determining the places where and the manner in which money shall be expended. If the town board and the superintendent agree that the money shall be expended by contract irrespective of the amount involved, they may do so.

§ 49. **Machinery, tools and implements.** The town superintendent may, with the approval of the town board, purchase for the use of the town, stone crushers, steam rollers, motor trucks, scarifiers, concrete mixers, traction engines, road machines for grading and scraping, tools and other implements, subject to the limitations prescribed in section ninety-four, which shall be paid for from moneys levied and collected or from the proceeds of

bonds issued and sold for such purposes as provided in this chapter. No contract for the purchase of stone crushers, steam rollers, motor trucks, scarifiers, concrete mixers, or traction engines shall be valid, unless the district or county superintendent shall have approved thereof and indorsed his approval upon such contract. All road machines, stone crushers, steam rollers, motor trucks, scarifiers, concrete mixers, or traction engines, tools and other implements owned either by the town or the highway districts therein, shall be used by the town superintendent in such manner and at such places in such towns as he shall deem best. They shall be under the control of the superintendent and be cared for by him at the expense of the town. The town superintendent shall annually make a written inventory of all such machinery, tools and implements, indicating each article and stating the value thereof, and the estimated cost of all necessary repairs thereto, and deliver the same to the supervisor of the town on or before October thirty-first in each year. He shall at the same time file with the town clerk his written recommendations as to what machinery, tools and implements should be purchased for the use of the town, and the probable cost thereof. The town superintendent shall provide a suitable place for housing and storing all machinery, tools and implements owned by the town and cause the same to be stored therein, when not in use. He may also with the approval of the town board, sell any such machinery, tools and implements, which are no longer needed by the town, or which are worn out or obsolete, or may exchange the same for new machinery, tools and implements. If sold, the proceeds shall, under the direction of the town board, be applicable to the purchase of the machinery, tools and implements mentioned in subdivision three of section ninety-four of this chapter. Where there is an incorporated village constituting a separate road district, wholly or partly in a town which has purchased a stone crusher, steam roller, motor truck, scarifier, concrete mixer, or traction engine, the town board of such town may permit the use thereof by such village upon such terms as may be agreed upon.

Amended by L. 1917, ch. 349, and L. 1918, ch. 329.

See *Gardner v. Town of Cameron*, 202 N. Y. 558.

**§ 50. Town superintendent may hire machinery.** The town superintendent may, with the approval of the district or county superintendent, lease or hire stone crushers, steam rollers, motor

trucks, scarifiers, concrete mixers and traction engines at a rate to be approved by the town board, which shall not exceed twenty dollars for a stone crusher, steam roller or motor truck, eight dollars for a scarifier or concrete mixer and fifteen dollars for a traction engine, for each day such stone crusher, steam roller, motor truck, scarifier, concrete mixer, or traction engine is actually used upon the highways. The expense thereof shall be paid by the supervisor, upon the written order of the town superintendent, out of moneys received by him, as provided in this chapter, for the repair and improvement of highways.

Amended by L. 1918, ch. 329 and L. 1919, ch. 173.

§ 51. **Purchase of gravel and stone.** The town superintendent may, with the approval of the town board, purchase of the owner of any gravel bed or pit, or stone quarry within the town, gravel or stone for the purpose of grading, repairing or otherwise improving the highways of the town, at a price per cubic yard to be approved by the town board. If such town superintendent cannot agree with any such owner for the purchase of such gravel or stone, he may, with the approval of the town board, acquire by condemnation the right to take and use such gravel or stone, and to remove the same from such bed, pit or quarry, for the purpose of grading, repairing or otherwise improving such highways, together with the right of way to and from such bed, pit or quarry, for the purpose of such removal. No such gravel or stone shall be so taken by condemnation within five hundred feet of any house or barn, or from any lawn, orchard or vineyard. The purchase price of such stone or gravel and the damages awarded in such condemnation proceedings, together with the costs and expenses thereof, shall be a town charge and paid from moneys levied and collected therefor, as provided by law. If the town shall abandon for the period of three years any right acquired under this section to take and use the gravel or stone from any such bed, pit or quarry, for a period of three years, or if the superintendent shall cease to use the same for the purposes for which it was acquired, the right thereto shall cease, and the ownership thereof shall revert to and become vested in the owner of such bed, pit or quarry, or his heirs or assigns.

§ 52. **Obstructions and their removal.** Obstructions, within the meaning of this section, shall include trees which have been cut or

have fallen either on adjacent lands or within the bounds of the highway, in such a manner as to interfere with public travel therein; limbs of trees which have fallen within the highway, or branches of trees overhanging the highways so as to interfere with public travel therein; lumber, wood or logs piled within the bounds of the public highway; machines, vehicles and implements abandoned or habitually placed within the bounds of the highway; fences, buildings or other structures erected within the bounds of the highway; earth, stone or other material placed in any ditch or waterway along the highway; telegraph, telephone, trolley and other poles, and the wires connected therewith, erected within the bounds of the highway in such a manner as to interfere with the use of the highway for public travel.

It shall be the duty of each owner or occupant of lands situate along the highway, to remove all obstructions within the bounds of the highway, which have been placed there, either by themselves or by their consent. It shall be the duty of all telephone, telegraph, electric railway and other electrical companies, to remove and reset telephone, telegraph, trolley and other poles and the wires connected therewith, when the same constitute obstructions to the use of the highway by the traveling public. If temporary obstructions such as trees, lumber, wood, logs, machinery, vehicles and similar obstructions are not removed within five days after the service of a notice, personally or by mail, upon such owner or occupant, requesting the same to be done, the town superintendent shall remove such obstruction. And if permanent obstructions, including, among others, telegraph, telephone, trolley and other poles and wires connected therewith, are not moved and reset within thirty days, the town superintendent shall move and reset such poles and wires. The expense thereby incurred shall be paid in the first instance out of moneys levied and collected and available therefor, and the amount thereof shall be charged against such owner, occupant or company, and levied and collected, as provided in section fifty-five.

Amended by L. 1914, ch. 196.

§ 53. The town superintendent shall cause the removal of obstructions caused by snow on state and county highways within the town. He shall also, during such time as patrolmen are not employed thereon, cause snow and ice to be removed from the culverts and waterways of such highways when necessary, and the

cost thereof shall be paid from the miscellaneous or other town funds.

Amended by L. 1914, ch. 197.

§ 53-a. **Temporary obstruction of highways.** The necessary obstruction of a highway by the removal of buildings or other temporary obstruction shall only be allowed if a highway other than a state or county highway under a permit granted by the county superintendent upon the written request of the town superintendent, and if a state or county highway under a permit granted by the commissioner of highways.

Added by L. 1910, ch. 567 and amended by L. 1913, ch. 80.

§ 54. **Removal of noxious weeds and brush within the highways, and of obstructions caused by snow.** It shall be the duty of the owner or occupant of lands situated along the highway to cut and remove the noxious weeds growing within the bounds of the highway, fronting such lands, at least twice in each year, once in the month of June, and once in the month of August. It shall be the duty of such owner or occupant to cut and remove all briars and brush, growing within the bounds of the highway, fronting such lands, once in the month of August in each year. It shall also be the duty of such owner or occupant to remove brush, shrubbery and other obstructions within the bounds of the highway, causing the drifting of snow upon said highway, before the first day of November in each year. If such owner or occupant fails to cut or remove such weeds or brush, or to remove such brush, shrubbery or other obstructions, causing the drifting of snow, as provided herein, the town superintendent of the town in which said lands are situated shall cause the same to be done and the expense thereby incurred shall be paid in the first instance out of moneys levied and collected and available therefor, and the amount thereof shall be charged against such owner or occupant, and levied and collected, as provided in section fifty-five. The town board of any town may, by resolution, determine that the work required by this section to be done by the owner or occupant of lands situated along the highways shall be done by the town superintendent. If such resolution be adopted such work shall be done by the town superintendent at the times prescribed by this section, the cost thereof shall not be charged or assessed against the owner or occupant but shall be a town charge, and there shall be annually raised in

such town in addition to the other moneys raised for highway purposes, a sum sufficient to pay such expense.

Added by L. 1911, ch. 151.

**§ 55. Assessment of cost against owners and occupants.** The town superintendent shall assess the cost of,

1. Removing obstructions and moving and resetting poles and wires, pursuant to section fifty-two.

2. Cutting and removing noxious weeds, briars and brush and removing brush, shrubbery and other obstructions within the highways, causing the drifting of snow, pursuant to section fifty-four, against the owner, occupant or company neglecting to perform the duty imposed by the sections above referred to. Such town superintendent shall serve personally or by mail upon such owner, occupant or company, a written notice, stating that at a time and place specified therein, he will assess such cost against the owner, occupant or company neglecting to perform such duty. Such notice shall be served at least eight days previous to the time specified therein. If directed against a company, it may be served upon it at its principal place of business, or upon an agent of the company within the town. At the time and place so specified, he shall hear the parties interested, and shall thereupon complete the assessment, stating therein, the name of each owner, occupant or company, and the amount assessed against him or it, and shall return such assessment to the town clerk who shall present the same to the town board of his town, at its meeting held on the Thursday preceding the annual meeting of the board of supervisors. Such town board shall certify such assessment to the board of supervisors who shall cause the amount stated therein to be levied against such owner, occupant or company and any uncollected tax shall be a lien upon the land affected. The amount so levied shall be collected in the same manner as other taxes levied by such board, and shall be paid to the supervisor of the town, to be applied in reimbursing the fund from which such cost was defrayed.

**§ 56. Wire fences to prevent snow blockades.** The town superintendent, with the consent of the town board, may purchase wire for fences to be erected for the prevention of snow blockades, and the said town superintendent is hereby authorized to contract with the owners of the lands lying along the highways of their

respective towns, at such points as are liable to snow blockade, for the removal of the fences now standing along the boundaries of such highways and the replacing of such fences with wire fences. He may contract to deliver to such land owners fence wire to be used in the construction of such fences, without charge to said land owners, at the place of purchase, but he shall not agree to pay any part of the cost of the removal or construction called for by said contracts, or to make any payment to said land owners, as a compensation for the construction of fences or for posts. The amount to be expended for the purchase of such wire shall not exceed the sum of three hundred dollars in any one year, and such amount shall be included in the estimate for expenditures for removal of obstructions caused by snow, and other miscellaneous purposes, and paid from the money levied and collected therefor. The fences to be built, under the provisions of this section, shall be of not less than four strands of wire, nor more than nine strands, in the discretion of the town superintendent, approved by the town board, and the construction of said fences and their distance apart, shall be such as said town superintendent shall prescribe. Whenever such fence or fences shall become so out of repair as to be dangerous to animals passing along the highway, it shall be the duty of the owner or owners of said fence or fences to immediately repair or replace the same. Whenever the town superintendent shall contract for the removal of any fence, under the provisions of this section, he shall file in the office of the town clerk a description of that portion of the highway to which said contract shall apply, and thereafter it shall not be lawful for any person to replace the fence so contracted to be removed, with any fence liable to cause the drifting of snow. In no case shall the town superintendent approve of or permit the use of barb wire for such fences.

§ 57. **Entry upon lands by town superintendent.** The town superintendent may, when directed by the district or county superintendent, and when authorized by the town board, enter

1. Upon any lands adjacent to any of the highways in the town, for the purpose of opening an existing ditch or drain, or for digging a new ditch or drain for the free passage of water for the drainage of such highways.

2. Upon the lands of any person adjoining rivers, streams or creeks, to drive spiles, throw up embankments and perform such other labor as may be necessary to keep such rivers, streams or

creeks within their proper channels, and to prevent their encroachment upon highways or abutments of bridges.

3. Upon the lands adjoining a highway which, during the spring freshets or at a time of highwater are subject to overflow from such rivers, streams or creeks, to remove or change the position of a fence or other obstruction preventing the free flow of water under or through a highway, bridge or culvert, whenever the same may be necessary for the protection of such highway or bridge.

4. Upon any lands adjacent to highways to remove any fence or other obstruction which causes snow to drift in and upon such highways, and erect snow fences or other devices upon such lands to prevent the drifting of snow in or upon such highways.

§ 58. **Damages to owners of lands.** Where lands are entered upon under the provisions of the preceding section, the town superintendent shall agree with the owner of such lands, subject to the approval of the town board, as to the amount of damages, if any, sustained by such owner in consequence of such entry in performance of the work authorized by such section, and the amount of such damages shall be a town charge. If the town superintendent is unable to agree with such owner upon the amount of damages thus sustained the amount thereof shall be ascertained, determined and paid in the manner that damages are so ascertained, determined and paid, where new highways are laid out and opened and the town superintendent and land owners are unable to agree upon the amount thereof.

§ 59. **Damages for change of grade.** In any town in which a town highway shall be repaired, graded and macadamized from curb to curb by the authorities of the town the owner or owners of the land adjacent to the said highway shall be entitled to recover from the town the damages resulting from any change of grade. A person claiming damages from such change of grade must present to the town board of such town a verified claim therefor within sixty days after such change of grade is effected. The board may agree with such owner upon the amount of damages to be allowed him. If no agreement be made within thirty days after the presentation of the claim, the person presenting it may apply to the supreme court for the appointment of three commissioners to determine the compensation to which he is en-

titled. Notice of the application must be served upon the supervisor of the town at least ten days before the hearing thereof. All proceedings subsequent to the appointment of commissioners shall be taken in accordance with the provisions of the condemnation law so far as applicable. Such town board, or such commissioners, shall, in determining the compensation, consider the fair value of the work done, or necessary to be done, in order to place the claimant's lands, or buildings, or both, in the same relation to the changed grade as they stood to the former grade, and make awards accordingly, except that said board or said commissioners may make an allowance for benefits derived by the claimant from such improvement. The amount agreed upon for such damages, or the award therefor together with the costs, if any, allowed to the claimant, shall be a charge against such town and the supervisor shall pay the same, if there be sufficient funds in his hands available, and if not, the town board shall borrow money for the payment thereof, as provided in section ninety-seven, or issue certificates of indebtedness therefor, as provided in section ninety-six. Bonds of the town to raise the money necessary to make such payment, and such bonds or such certificates of indebtedness shall bear a rate of interest not exceeding five per centum per annum payable semi-annually. Such bonds shall be in the same form, and shall be issued and sold in the same manner as other town bonds.

**§ 59-a. Interest on damages for change of grade.** Whenever awards shall be lawfully made, pursuant to any statute of this State, for damages sustained by real estate or any improvements thereon by reason of any change of grade of any street, avenue or road in front thereof, the award for the principal amount of damages sustained shall bear interest at the rate of six per centum per annum from the time of the change of grade to the time of the payment of the award.

Added by L. 1910, ch. 701. In effect June 25, 1910.

**§ 60. Drainage, sewer and water pipes, cattle passes or other crossings in highways.** The town superintendent may, with the consent of the town board, upon the written application of any resident or taxpayer of his town or a corporation, grant permission for an overhead or underground crossing, or to lay and maintain nage, sewer and water pipes under ground within the portion

therein described of a town highway. If the highway is a state or county highway such permission shall be granted with the consent of the county or district superintendent instead of the town board. Permission shall not be granted for the laying and maintaining of such pipes under the travelled part of the highway, except across the same, for the purposes of sewerage and draining swamps or other lands, and supplying premises with water. Such permission shall be granted upon the condition that such pipes and hydrants or crossings shall be so laid, set or constructed as not to interrupt or interfere with public travel upon the highway, and upon the further condition that the applicant will replace the earth removed and leave the highway in all respects in as good condition as before the laying of said pipes, or construction of such crossings, and that such applicant will keep such pipes and hydrants or crossing in repair and save the town harmless from all damages which may accrue by reason of their location in the highway, and that upon notice by the town superintendent the applicant will make the repairs required for the protection or preservation of the highway. The permit of the town superintendent, with the consent of the town board or county or district superintendent, and the acceptance of the applicant, shall be executed in duplicate, one of which shall be filed in the office of the town clerk and the other in the office of the district or county superintendent. In case the applicant shall fail to make any of the repairs required to be made under the permit, they may be made by the town superintendent at the expense of the applicant, and such expenses shall be a lien, prior to any other lien, upon the land benefited by the use of the highway for such pipes, hydrants or structures. The town superintendent may revoke such permit upon the applicant's failure to comply with any of the conditions contained therein.

Amended by L. 1916, ch. 462.

**§ 61. Trees and sidewalks.** The town superintendent may, by an order in writing, approved by a majority of the members of the town board, authorize the owners of property adjoining the highways, at their own expense, to locate and plant trees and locate and construct sidewalks along the highways, in conformity with the topography thereof, which order with a map or diagram, showing the location of the sidewalk and tree planting, certified

by the town superintendent, shall be filed in the office of the town clerk, within ten days after the making of the order.

**Willful injury to shade trees.** A person who willfully cuts down, girdles or otherwise injures a fruit, shade or ornamental tree standing on the lands of another, or of the people of the State, is guilty of a misdemeanor. Penal Law, § 1452.

**Rights of electric corporations in respect to shade trees.** In stringing its wires a corporation has no right to cut branches of trees belonging to abutting owners, unless such course is demanded by an existing necessity which cannot be avoided by insulating the wires or by employing other practical means which may be more expensive and less convenient. *Van Scien v. Jamaica Electric Light Co.*, 45 App. Div. 1, 61 N. Y. Supp. 210 (1899). The right to the protection of shade trees vested in the owners of adjoining lands is subservient to the proper and legitimate use of the highway by the public. The question as to whether or not the use of public highways in the country by electric lighting companies is within the proper public use of such highways is, in all cases, to be determined by the necessity of the light for the proper use of such highways. *Farmer v. Larchmont Electric Co.*, 153 N. Y. 231 (1899).

**§ 62. Expenditures for sidewalks.** The town superintendent of any town may, with the consent of the town board, maintain and repair existing sidewalks in such town, and the expense thereof shall be a town charge. Where such sidewalk shall consist of a board walk not more than ten feet in width located on a highway less than two rods in width the town superintendent of such town may maintain and repair such board walk or renewal thereof and with the consent of the town board may replace such board walk with a walk of concrete or other suitable construction and the expense thereof shall be a town charge. The town board of any such town may on the petition of not less than twenty-five taxpayers of the town, by resolution, direct the town superintendent to construct a sidewalk along a described portion of any highway of the town, in the manner and not exceeding an expense to be specified in the resolution, and the expense of constructing such sidewalk shall be a town charge, and shall be paid in the same manner as other town charges.

Amended by L. 1915, ch. 322.

Chapter 139 of the Laws of 1911, amends the Town Law in relation to the establishment and maintenance of sidewalks outside of incorporated cities and villages, and provides for the payment of sidewalk improvement by towns.

**§ 63. Allowance for shade trees.** There shall be allowed by town superintendent, with the consent of the town board, to

each such owner or occupant, who shall set out or transplant by the side of the highway adjoining his premises, any forest shade trees, fruit trees, or nut bearing trees suitable for shade trees, in conformity with the preceding section, the sum of one dollar for each three living trees so set out or transplanted, to be paid by the supervisors to such owner or occupant, upon the order of the town superintendent out of moneys levied and collected for miscellaneous purposes. Such allowance shall only be made for trees so set out or transplanted during the preceding year, and living and well protected from animals at the time of the allowance. Such trees shall be set out or transplanted not more than eight feet from the outside line of any highway three rods wide, and not more than one additional foot distant therefrom, for each additional rod in width of highway, and not less than seventy feet apart, on the same side of the highway, if elms, or fifty feet, if other trees. Trees transplanted by the side of the highway, in place of trees which have died, shall be allowed for in the same manner.

**§ 64. Custody of shade trees.** The town superintendent shall have the full control of all shade trees in the public highways of the town, but not within the limits of an incorporated village, and shall prosecute complaints for malicious injury to, or unlawful acts concerning, public shade trees. Upon the recommendation of the town superintendent, the town board may, by resolution, appropriate a sum, not exceeding two hundred dollars, to be known as the "Shade Tree Fund." Such fund shall be placed in the hands of the supervisor as custodian and shall be expended by him upon the written order of the town superintendent, for the setting out and preservation of shade trees along the highways in such town.

#### **Village Law.**

**§ 329-d. Trees and shrubs.** In any such village the board of trustees may annually raise by taxation and appropriate and expend in the planting, care and preservation of trees and shrubs in and upon the public streets thereof a sum not exceeding fifteen hundred dollars.

Added by L. 1919, ch. 52.

**§ 65. Compensation for watering troughs.** The town superintendent may, with the consent of the town board, authorize the owner or occupant of lands to construct and maintain a watering trough beside the public highway, to be supplied with fresh water from the surface of which shall be three or more feet above the

of the ground and easily accessible for horses with vehicles, but when possible, all such watering troughs shall be constructed on the lower side of the highway. Such watering trough shall be maintained by such owner or occupant and kept supplied with fresh water. The town superintendent shall annually give a written order upon the supervisor for three dollars to be paid to such owner or occupant by the supervisor, for maintaining such watering trough, and keeping the same supplied with fresh water, out of moneys levied and collected for miscellaneous purposes.

§ 66. **Credit on private road.** Any person living upon a private road may be credited on account of his highway taxes in any year an amount equal to the value of the work which the town superintendent may deem necessary to be done in such year upon such road. The town superintendent shall issue to him a statement containing the name of the person, the location of the road, the amount of work so deemed necessary to be done, and the value thereof. Such statement shall be presented to the town board at its annual meeting for the audit of town accounts, and if approved by such board, and such work shall have been done, an order shall be issued directing the supervisor to pay the sum specified in such statement to the person therein named, or his assignee, out of moneys in the hands of the supervisor available for highway purposes. The amount so paid in any year shall not exceed the amount payable by the person named in such statement on account of moneys levied in such town for the repair and improvement of highways as provided in this chapter. This section shall not apply to private roads or rights of way over lands of the owner thereof used by him for his own convenience.

§ 67. **Neglect or refusal to prosecute.** If the town superintendent shall neglect or refuse to prosecute for any penalty, knowing the same to have been incurred, he shall be liable to a penalty of ten dollars for every such neglect or refusal, which shall be recovered by action in the name of the town, by the supervisor, or by any taxpayer of the town who shall indemnify the town for the costs and expense of the action, in such manner as the supervisor may approve.

§ 68. **Erection of guide boards.** The town superintendent may, with the consent of the town board, cause guide posts with proper inscriptions and devices to be erected at the intersections of such highways therein, as may be necessary, which shall be kept in

repair by him at the expense of the town. Upon written application to him, of five resident taxpayers of any town or twenty resident taxpayers of the county in which such town is located, requesting the erection of one or more guide boards at the intersection of highways in such town, it shall be his duty to cause to be erected at the intersections mentioned in such application, such guide boards indicating the direction, distances and names of the towns, villages or cities to or through which such intersecting highways run. Such application shall designate the highway intersections at which such guide boards are requested to be erected, and may contain suggestions as to the inscriptions and devices to be placed upon such boards. The cost of the erection and maintenance of such boards shall be a town charge. If the town superintendent refuses or neglects for a period of sixty days after receiving such application to comply with the request contained therein, he shall, for such neglect or refusal, forfeit to the town, the sum of twenty-five dollars, to be recovered by the supervisor in the name of the town and the amount so recovered shall be set apart for the erection of such guide boards.

**§ 69. Measurement of highways and report.** Within six months after the taking effect of this chapter, and as often as the commission shall direct, the town superintendent shall measure all highways of his town. Such measurements shall be made either by the use of a cyclometer or otherwise as the commission shall direct. He shall ascertain, and indicate in his report, the town highways which have been surfaced with gravel, those which have been surfaced with crushed stone and those which have been shaped and crowned. He shall report in triplicate on forms to be prescribed and furnished by the commission, the total mileage of all highways within his town, specifying as above provided as to town highways, one of which shall be filed with the town clerk, one with the district or county superintendent, and one with the commission.

**§ 70. Application for service of prisoners.** After satisfying himself that proper quarters can be secured, the town superintendent may, with the consent of the town board, request the supervisor of the town under the provisions of section ninety-three of the county law, to procure the services of prisoners serving sentence in the county jail, for general work upon the public highways of the town.

See Prison Law, § 179, following section 131.

**§ 71. Construction and repair of approaches to private lands.** The owners or occupants of lands shall construct and keep in repair all approaches or driveways from the highway, under the direction of the district or county superintendent, and it shall be unlawful for such owner or occupant of lands to fill up any ditch or place any material of any kind or character in any ditch so as to in any manner obstruct or interfere with the purposes for which it was made. The town superintendent may, when directed by the town board, construct and keep in repair such approaches and the expense thereof shall be a town charge.

**§ 72. Unsafe toll bridge.** Whenever complaint in writing, on oath, shall be made to the town superintendent, of any town in which shall be in whole or in part any toll bridge belonging to any person or corporation, representing that such toll bridge has from any cause become and is unsafe for the public use, such town superintendent shall forthwith make a careful and thorough examination of such toll bridge, and if upon the examination thereof he shall be of the opinion that the same has from any cause become dangerous or unsafe for public use, he shall thereupon give immediate notice to the owners of such toll bridge, or to any agent of such owners, acting as such agent in respect to such bridge, that he has, on complaint made, carefully and thoroughly examined the bridge, and found it to be unsafe for public use. Such owners shall thereupon immediately commence repairing the same, and cause such repairs to be made within one week from the day of such notice given, or such reasonable time thereafter as may be necessary to thoroughly repair the bridge, so as to make it in all respects safe and convenient for public use. For neglect to take prompt and effective measures so to repair the bridge, its owners shall forfeit twenty-five dollars, and shall not demand or receive any toll for using the bridge until the same shall be fully repaired. The town superintendent shall cause such repairs to be made and the owners of the bridge shall be liable for the expense thereof, and for the services of the superintendent, and upon the neglect or refusal to pay the same upon presentation of an account therefor, the town superintendent may recover the same by action, in the name of the town.

**§ 73. Actions for injuries to highways.** The town superintendent shall bring an action in the name of the town, against any person or corporation, to sustain the rights of the public, in and to

any town highway in the town, and to enforce the performance of any duty enjoined upon any person or corporation in relation thereto, and to recover any damages sustained or suffered, or expenses incurred by such town, in consequence of any act or omission of any such person or corporation, in violation of any law or contract in relation to such highway.

See sections 74, 330 and 46 of the Highway Law, and sections 1530, 1423, 1841 and 1857 of the Penal Law.

**§ 74. Liability of town for defective highways.** Every town shall be liable for all damages to persons or property sustained by reason of any defect in its highways or bridges, existing because of the neglect of any town superintendent of such town. No action shall be maintained against any town to recover such damages, unless a verified statement of the cause of action, including the time and place at which such injury is alleged to have been received, shall have been filed with the town clerk and supervisor of the town within ninety days after the cause of action accrued. And no such action shall be commenced until fifteen days after the service of such statement.

Amended by L. 1913, ch. 389, and L. 1918, ch. 161.

### **County Law, § 6**

County liable for injuries caused by defective highways and bridges. When, by law, a county has charge of the repair or maintenance of a road, highway, bridge or culvert, the county shall be liable for injuries to person or property sustained in consequence of such road, highway, bridge or culvert being defective, out of repair, unsafe, dangerous or obstructed existing because of the negligence of the county, its officers, agents or servants. A civil action may be maintained against the county to recover damages for any such injury; but the county shall not be liable in such action unless a written claim for such damages, verified by the oath of the claimant, containing a statement of the place of residence with reasonable certainty, and describing the time when, the particular place where and the circumstances under which the injuries were sustained, the cause thereof and, so far as then practicable, the nature and extent thereof, shall within three months after the happening of the accident or injury or the occurrence of the act, omission, fault or neglect out of which or on account of which the claim arose, be served upon the county clerk or chairman of the board of supervisors. No action shall be commenced upon such claim until the expiration of three months after the service of such notice.

Added by L. 1917, ch. 578.

**§ 75. Action by town against superintendent.** If a judgment shall be recovered against a town for damages to person or property, sustained by reason of any defect in its highway or bridges,

existing because of the neglect of any town superintendent, such town superintendent shall be liable to the town for the amount of the judgment, and interest thereon, but such judgment shall not be evidence of the negligence of the superintendent in the action against him.

§ 76. **Audit of damages without action.** The town board of any town may audit as a town charge, in the same manner as other town charges are audited, any one claim not exceeding five hundred dollars, for damages to person or property, heretofore or hereafter sustained by reason of defective highways or bridges in the town, if in their judgment it be for the interest of the town so to do; but no claim shall be so audited unless it shall have been presented to the supervisor and town clerk of the town within ninety days after it accrued, nor if any action thereon shall be barred by the statute of limitations. The town board may also audit any unpaid judgment heretofore or hereafter recovered against a town superintendent for any such damages, if such town board shall be satisfied that he acted in good faith, and the defect causing such damage did not exist because of the negligence or misconduct of the superintendent against whom such judgment shall have been recovered.

Amended by L. 1918, ch. 161.

§ 77. **Closing highways.** If it shall appear necessary to close any highway in order to permit a proper completion of any work of improvement thereon conducted by the state, county or town, the district or county superintendent shall, upon request of the division engineer, or direction of the state commissioner of highways execute a certificate and file the same in the office of the town clerk of the town in which such highway is situated. Such certificate shall state the necessity for the closing of such highway and describe the portion thereof to be closed; not more than two miles of any highway shall be closed at any one time. At the time of filing such certificate such district or county superintendent shall notify the town superintendent to close the highway, who shall thereupon close the same to public travel by erecting suitable obstruction and posting conspicuous notices to the effect that the highway is closed. The town superintendent shall, if practicable, provide a new location for, and construct a temporary highway to be used by the traveling public in lieu of the closed highway and may erect temporary bridges when necessary

or cause other existing highways to be used, when so directed by the district or county superintendent. For the purpose of locating, constructing and erecting such temporary highway or bridge the town superintendent may enter upon the lands adjoining or near to the closed highway and may, with the approval of the town board, agree with the owners of such land as to the damages if any caused thereby. If the town superintendent is unable to agree with such owner upon the amount of damages thus sustained the amount thereof shall be ascertained, determined and paid as provided in section fifty-eight. When such highway shall have been closed to the public as provided herein any person who disregards the obstruction and notice, and drives, rides or walks over the portion of the highway so called shall be guilty of a misdemeanor.

The district or county superintendent in his discretion may temporarily close a town highway or a county road for a period of not to exceed ten days. In closing such highway or road the district or county superintendent shall proceed in the manner provided in this section, and he shall immediately transmit to the division engineer a written notice of such closing. The provisions of this section with regard to the closing of highways generally shall apply in like manner to such temporary closing.

Amended by L. 1911, ch. 646, and L. 1918, ch. 148.

**§ 78. Adoption of labor system for removing snow.** The town board of any town at its annual meeting on the first Thursday after general election, may, by resolution, determine that no money shall be raised in such town for the ensuing year for the removal of obstructions in the highways caused by snow, and that such obstructions shall be removed by the labor of persons and corporations liable to be assessed in such towns for highway taxes.

Added by L. 1909, ch. 488, and amended by L. 1910, ch. 136.

**§ 79. Assessment of labor for the removal of snow.** The town superintendent of a town in which the obstructions in the highways caused by snow shall be removed by the labor of persons and corporations liable to assessment in each town for highway taxes, pursuant to the last preceding section shall annually on or before November fifteenth divide the town into a convenient number of highway districts and file a description thereof in the office of the town clerk, and before such date shall make an estimate giving the probable number of days labor needed during the following year

for the removal of obstructions caused by snow in the highways and for the prevention of such obstructions and shall assess one day's labor upon each male inhabitant of the town above the age of twenty-one years, excepting honorably discharged soldiers and sailors who lost an arm or a leg in the military or naval service of the United States, or who are unable to perform manual labor, by reason of injuries received or disabilities incurred in such service, members of any fire company formed or created pursuant to any statute, and situated within such town, persons seventy years of age or over, clergymen and priests of every denomination, paupers, idiots and lunatics. The balance of such estimated number of days shall be apportioned and assessed upon the estate, real and personal, of every inhabitant of the town, including corporations liable to taxation therein, as the same shall appear by the last assessment roll of the town, and upon each parcel or tract of land owned by the nonresidents, excepting such as are occupied by an inhabitant of the town, which shall be assessed to the occupant. The assessment of labor for personal property must be in the district in which the owner resides, and real property in the district where it is situated, except that the assessment of labor upon the property of corporations may be in any district or districts of the town, and such labor may be worked out or commuted for as if the corporation were an inhabitant of the district; but the real property within an incorporated city or village exempted from the jurisdiction of the town superintendent, and personal property of an inhabitant thereof, shall not be assessed for such labor by the town superintendent. Whenever the assessors of any town shall have omitted to assess any inhabitant, corporation or property therein, the town superintendent shall assess the same, and apportion the labor as above provided.

Added by L. 1909, ch. 488, and amended by L. 1910, ch. 136.

**§ 80. Lists of persons assessed for removal of snow.** A copy of the lists of persons and corporations assessed shall be prepared by the town superintendent and filed in the office of the town clerk. The town superintendent may at any time file in the office of the town clerk a supplemental list containing the names of persons or corporations omitted from the original list, and the names of new inhabitants, and shall assess them in proportion to their real and personal estate as others assessed by him on such list.

Added by L. 1909, ch. 488.

**§ 81. District foreman; return and levy of unworked tax.**

The town superintendent shall also, immediately after the town has been divided into districts as provided in section seventy-nine of this chapter, appoint a foreman in each district, who shall be a taxable resident thereof, who shall serve for one year and until his successor is appointed and shall receive such per diem compensation, not exceeding two dollars per day, for time actually spent in performing his duties, as the town board may prescribe, payable as the compensation of other town officers is paid. The superintendent shall prepare, from the lists prescribed in section eighty, a separate list for each district of persons and corporations assessed therein for the then current year for labor in removing obstructions caused by snow, showing the number of days labor for which each person or corporation is assessed, and shall deliver each such list to the foreman of the proper district. It shall be the duty of each foreman to notify the several persons and corporations thus assessed, or such of them as the occasion demands, from time to time as needed, that they are required to appear and perform labor in the removal of obstructions caused by snow at a time and place stated by the foreman. On or before the first day of May each district list, showing the portions worked or commuted for, the portions in which parties were notified but failed to perform work after being so notified, and the portions upon which no notice to perform work was served, shall be returned by the district foreman to the town superintendent. All assessments upon which parties have been notified and failed to appear or commute shall then be certified by the town superintendent to the town board, who shall return the same to the board of supervisors of the county and which shall be included by them in the next tax-roll of the town and levied against the persons and corporations assessed at the rate of one dollar and fifty cents per day as other taxes are levied.

Inserted by L. 1910, ch. 136.

**§ 82. Appeals by nonresident; certain assessments to be separate; tenant may deduct assessment.** Whenever any nonresident owner of unoccupied land shall conceive himself aggrieved by any such assessment of any town superintendent, such owner or his agent, may, within thirty days after such list has been filed in the office of the town clerk, appeal to the county judge of the county in which such land is situated, who shall within twenty days thereafter hear and decide such appeal, the owner or agent

giving notice to the town superintendent of the time of the hearing before the judge, and his decision thereupon shall be final and conclusive. Whenever the town superintendent shall assess the occupant for any land not owned by such occupant, he shall distinguish in his assessment list the amount charged upon such list, from the personal tax, if any, of the occupant thereof; but when any such land shall be assessed in the name of the occupant, the owner thereof shall not be assessed during the same year on account of the same land. Whenever any tenant of any land, for a less term than twenty-five years, shall be assessed to work on the highways for such land, and shall actually perform such work or commute therefor, he shall be entitled to a deduction from the rent due or to become due from him for such land, equal to the full amount of such assessment, estimating the same at the rate of one dollar per day, unless otherwise provided for by agreement between the tenant and his landlord. Whenever the highways in any district are obstructed by snow, the town superintendent shall immediately call upon the persons and corporations in such district assessed for labor in pursuance of the preceding sections to assist in removing such obstruction, and shall credit such persons or corporations with the days' labor so performed. If any persons, corporations or occupants of land owned by nonresidents so called out neglect or refuse to appear at the place designated by the town superintendent or to commute at a dollar a day within twenty-four hours after due notice, the town superintendent shall cause the obstruction to be immediately removed and on or before September first of each year, or at such other time as the board of supervisors may by resolution prescribe, make out a list of all persons, corporations or occupants of lands owned by nonresidents who shall fail to work out such labor or commute therefor, with the number of days not worked out or commuted for by each, charging for each day in such list at the rate of one dollar and fifty cents per day, verified to the effect that such persons, corporations or occupants of lands owned by nonresidents have been notified to appear and perform such labor or commute therefor, and that the same has not been performed or commuted. Such list shall be certified by the town superintendent of such town to the town board and by such town board to the board of supervisors and the highway commission, and the amount of such arrearages shall be levied by such board of supervisors against and collected from the real or personal estate of such persons and corporations and from the real estate owned by nonresidents specified

in such list, to be collected by the collectors of the several towns in the same manner that other town taxes are collected, and shall order the same when collected to be paid over to the supervisor to be by him added to the highway fund of the town. No persons or corporations shall be allowed any sum for highway labor performed in removing obstructions caused by snow, unless authorized or directed by the town superintendent to perform such labor. It shall be the duty of the town superintendent on or before the thirty-first day of October in each year to file with the highway commission a statement showing the number of days' labor assessed. It shall also be the duty of the town superintendent to file with the highway commission on or before the first day of June in each year a statement showing the number of days' labor performed or commuted for, the number of days' labor on which parties were notified but failed to labor, also the number of days' labor upon which no notice to appear was given.

Added by L. 1909, ch. 488. Renumbered and amended by L. 1910, ch. 136.

## ARTICLE V.

### Highway Moneys; State Aid.

- Section 90. Estimate of expenditures for highways and bridges.
91. Duties of town board in respect to estimates; levy of taxes.
92. Additional tax.
93. Extraordinary repairs of highways and bridges.
94. Limitations of amounts to be raised.
95. Submission of propositions at town meetings.
96. Borrowing money in anticipation of taxes.
97. Towns may borrow money for bridge and highway purposes.
- 97-a. Power of certain towns in the Adirondack park to borrow money for highway purposes.
98. Issue and sale of town bonds.
99. Assessment of village property.
100. Statement by clerk of board of supervisors.
101. Amount of state aid.
102. Mileage and assessed valuation.
103. Payment and distribution of state money.
104. Custody of highway moneys; undertaking of supervisor.
105. Expenditures for repair and improvement of highways.
106. Expenditures for bridges and other highway purposes.
107. Reports of supervisor as to highway moneys.
108. Highway accounts; forms and blanks.
109. Duty of town clerk.
110. Compensation of supervisor and town clerk.
111. Additional expenditure for improvement, repair and maintenance of town highways.

§ 90. **Estimate of expenditures for highways and bridges.** The town superintendent shall annually, on or before the thirty-first day of October, make a written statement in respect to the amount of money which should be raised by tax in the town for the ensuing year, beginning on said first day of November, for the purposes therein set forth which shall be filed with the town clerk. Such statement shall specify:

1. The amount of money necessary to be levied and collected for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet, and board walks or renewals thereof on highways less than two rods in width, and also the amount necessary to construct or repair any public roads, walks, places or avenues on any sand beach separated by more than two miles from the main body of the town. Such amount shall not be less than an amount which when added to the amount of money to be received from the state, under the provisions of section one hundred and one, will equal thirty dollars for each mile of highways within the town, outside the limits of incorporated villages, except that no town having an assessed valuation of three thousand seven hundred and fifty dollars or less per mile outside of incorporated villages shall be required to levy and collect a tax under this subdivision in excess of four dollars on each thousand dollars of assessed valuation.

Amended by L. 1914, ch. 84 and L. 1915, ch. 322.

2. The amount of money necessary to be levied and collected for the repair and construction of bridges, having a span of five feet or more.

3. The amount of money necessary to be levied and collected for the purchase, repair and custody of stone crushers; steam rollers, traction engines, road machines for grading and scraping, tools and implements.

4. The amount of money necessary to be levied and collected for the removal of obstructions caused by snow and for other miscellaneous purposes.

The amounts specified in such statement shall not exceed the limitations prescribed in section ninety-four. If the town superintendent is of the opinion that an amount in excess of the limitations therein prescribed be raised by tax he shall include in his statement his reasons therefor in detail.

**Change in method of highway taxation.** One of the objects sought by this law is the abolishing of the old labor system of taxation and substituting in place thereof in all towns the money system of raising highway taxes. This has affected the method of highway taxation in less than three hundred of the nine hundred and thirty-three towns of the State. In other towns the money system is in force when this chapter takes effect. In towns adopting the money system, under the former law, the amount of the tax to be levied and collected in the town was to be determined by the commissioner or commissioners of highways and the town board. See former Highway Law, § 53. The minimum amount to be collected in such towns for the repair of highways was required, by that section, to at least equal one-half the value of the commutation rates, of the highway labor which should be assessable under the labor system. This section of the former law did not, nor does the present law, prescribe the maximum amount which could be raised by tax for the repair and maintenance of highways.

If it became necessary to raise money by tax upon the town for other purposes than the repair and maintenance of highways, authority therefor, either expressed or implied, had to be found in the various more or less conflicting provisions of the former law. The new law seeks to eliminate this confusion by placing the initiative with the town superintendent, making it his duty to present to the town board in a formal statement, the amount, which in his opinion, should be raised in the town during the ensuing year for the purposes specified therein. This statement is in the nature of a highway budget. It becomes effectual and binding upon the town when finally approved by the town board. Upon such approval it is to be submitted to the board of supervisors who thereupon must cause the amounts specified in the statement to be levied and collected in the town in the same manner as other charges against the town are levied and collected. It is thus provided that an amount sufficient to properly administer highway affairs in the town for the ensuing year will be collected and ready for use in the hands of the supervisor. This statement must be submitted on or before the thirty-first day of October, which brings it to the attention of the town board so that the town board may act upon it at its regular meeting on the Thursday preceding the annual meeting of the board of supervisors. The levy is made by the board of supervisors at its annual meeting and when the tax warrant reaches the hands of the collector it provides for the collection of money sufficient to take care of highway matters during the ensuing year. Such moneys will be paid over to the supervisor, for the most part, in the months of January, February or March, prior to the time when active operations upon the highways are required to be begun.

§ 91. Duties of town board in respect to estimates; levy of taxes. The town board, at its meeting held on the Thursday succeeding general election day in each year, shall consider the estimates contained in such statement. It may by a majority vote of the members thereof, approve such statement, or increase or reduce the amount of any of the estimates contained therein, subject to the limitations prescribed in section ninety-four. The

statement as thus approved, increased or reduced shall be signed in duplicate by a majority of the members of the town board, one of which shall be filed in the office of the town clerk, and the other shall be delivered to the supervisor. The town clerk shall make and transmit a copy of such statement to the commission. The supervisor shall present such statement to the board of supervisors, and such board shall cause the amounts therein, subject to the limitation requiring a vote of the electors as hereafter provided, to be assessed, levied and collected in such town in the same manner as other town charges, and such amounts shall be expended for the purposes specified in such statement. The warrant for the collection of taxes in such town shall direct the payment of the money so collected to the supervisor of the town, to be held by him and paid out for the purposes specified in such statement, as provided in this chapter.

**Insufficient appropriations.** In the absence of authority conferred upon him the town superintendent has no power to proceed with the improvements, and apply in payment therefor the appropriation for the succeeding year, and expenditures so made create no legal claim against the town. *People ex rel. Peterson v. Clark*, 45 App. Div. 65, 60 N. Y. Supp. 1045 (1899). The town superintendent of highways cannot of his own volition bind the town for a greater amount than that estimated, levied and collected. *Mather v. Crawford*, 36 Barb. 564 (1862); *Barker v. Loomis*, 6 Hill, 463 (1844).

**§ 92. Additional tax.** Whenever the town superintendent and the town board shall determine that the sum of one thousand five hundred dollars will be insufficient to pay the expenses actually necessary for the removal of obstructions caused by snow and the prevention of such obstructions, and whenever they shall determine that the amounts levied and collected for any of the purposes mentioned in the statement presented to the board of supervisors, as provided in the preceding section, are insufficient to pay the expenses necessarily incurred for any of the purposes therein specified they may cause a vote to be taken by ballot at a biennial town meeting or at a special town meeting duly called therefor, authorizing such additional sum to be raised as they may deem necessary for such purpose, not exceeding one-third of one per centum upon the taxable property of the town as shown by the last assessment-roll thereof.

Amended by L. 1918, ch. 147.

**§ 93. Extraordinary repairs of highways and bridges.** If any highway or bridge or the board walk on any highway less than two rods in width, or a walk built to replace the same under section

sixty-two, shall at any time be damaged or destroyed by the elements or otherwise, or become unsafe for public use and travel, or if any bridge or the board walk on any highway less than two rods in width, or any such walk built to replace the same, be condemned by the commission, as provided in this chapter, the town superintendent shall cause the same to be immediately repaired or rebuilt, with the approval of the town board. Such highway or bridge or walk shall be so repaired or rebuilt in accordance with the directions or the plans and specifications prepared or approved by the district or county superintendent; except if the bridge or walk to be repaired or rebuilt is one which has been condemned by the commission, as provided in this chapter, the same shall be repaired or rebuilt in accordance with plans and specifications to be prepared or approved by the commission. The town clerk shall prepare a statement showing the probable cost of improving, repairing or rebuilding such highway or bridge or walk, which statement shall be signed in duplicate by a majority of the members of the town board, one of which duplicates shall be filed with the town clerk and one be delivered to the supervisor. The town clerk shall make a copy of such statement and transmit the same to the commission. The supervisor shall present such statement to the board of supervisors, who shall cause the amount contained in such statement to be assessed, levied and collected in the same manner as amounts levied and collected for other highway and bridge purposes, as provided by law. The amount so raised shall be paid to the supervisor to be expended for the purposes specified in such statement.

Amended by L. 1913, ch. 621, L. 1915, ch. 322 and L. 1917, ch. 261.

**Application.** This section does not authorize the rebuilding of a bridge which has become defective by ordinary wear and tear or the natural decay of the materials of which it was constructed, at a cost exceeding the moneys appropriated for highway purposes; it only authorizes such construction where the bridge has become destroyed by some emergency or by some extraordinary cause. It is more than doubtful if this section has any relation to or was intended to apply where a bridge or its approaches are partly in two towns. *People ex rel. Canton Bridge Co. v. Town Auditors*, 136 App. Div. 166 (1909), 120 N. Y. Supp. 696.

**§ 94. Limitations of amounts to be raised.** The amounts to be raised by tax upon the vote of a town board, as provided in this article, shall be subject to the following limitations:

1. The amount to be levied and collected in each year for the repair and improvement of highways, including sluices, culverts

and bridges having a span of less than five feet and board walks or renewals thereof, on highways less than two rods in width, shall not be less than the amount prescribed under subdivision one of section ninety.

2. Not more than fifteen hundred dollars shall be levied and collected in any one year in any town for the repair and construction of a bridge unless by unanimous consent of all members of the town board, but in no case shall more than three thousand dollars be levied and collected unless duly authorized by the vote of a town meeting.

3. Not more than ten hundred dollars shall be levied and collected in any one year in any town for the purchase or repair of stone crushers, steam rollers, motor trucks, scarifiers, concrete mixers, traction engines or road machines for grading and scraping, tools and implements, unless duly authorized by the vote of a town meeting except, however, in a town in a county having a population of more than three hundred thousand and less than three hundred and fifty thousand according to the last preceding state enumeration and in such a town not more than fifteen hundred dollars may be levied and collected in any one year for such purpose, unless by unanimous consent of all members of the town board, but in no case shall more than two thousand five hundred dollars be levied and collected in such a town for such purposes unless duly authorized by vote of a town meeting.

Amended by L. 1918, chs. 320, 329, and L. 1919, ch. 376.

4. Not more than fifteen hundred dollars shall be levied and collected in any one year in any town for the repair or construction of any highway or bridge which has been damaged or destroyed as provided in section ninety-three or which has been condemned by the commission as provided in this chapter, unless by unanimous consent of all members of the town board, but in no case shall more than three thousand dollars be levied and collected unless duly authorized by the vote of a town meeting.

Amended by L. 1916, ch. 578.

**Debts in excess of limitation.** A town superintendent has no general authority to bind the town by his contracts. He must find his authority in the statute, and those who deal with him, and with the other officers of the town are presumed to know this limitation of power. See *People ex rel. Everett v. Supervisors*, 93 N. Y. 397 (1883); *Berlin Bridge Co. v. Wagner*, 57 Hun, 346, 10 N. Y. Supp. 840 (1890). If he and the town board attempt to raise by tax more money than the limit prescribed by this section, the levy would be invalid, and the collection of the tax might be legally prevented.

§ 95. **Submission of propositions at town meetings.** A proposition to authorize the levy and collection of an amount greater than that specified in the preceding section for any of the purposes therein mentioned may be submitted upon the written application of twenty-five taxpayers upon the last town assessment-roll or by a majority of the members of the town board, at a biennial town meeting or a special town meeting duly called as provided by law. The provisions of the town law relating to the submission of town propositions at a biennial or special town meeting shall apply to the submission of such propositions. If such proposition be adopted the town board shall include in the estimates contained in the next statement submitted by it to the board of supervisors, as provided in section ninety-one, the amounts authorized to be raised by such proposition for the purposes therein stated, and thereupon such amounts shall be levied and collected, and paid to the supervisor, to be expended by him as directed by such proposition.

§ 96. **Borrowing money in anticipation of taxes.** The supervisor may, when authorized by the town board, borrow money in anticipation of taxes to be levied and collected, on the credit of the town, and issue certificates of indebtedness therefor in the following cases:

1. When an additional sum is directed to be levied and collected by a vote of a town meeting as provided in section ninety-two.
2. When an amount necessary for the payment of expenses incurred in the improvement, repair and rebuilding of a highway or bridge has been directed to be levied and collected as provided in section ninety-three.
3. When a proposition has been adopted at a town meeting as provided in section ninety-five authorizing the levy and collection of an amount greater than that specified in section ninety-four for any of the purposes therein mentioned.
4. When the board of supervisors has authorized a town board to borrow its share of the cost of improving a town highway as provided by section three hundred and twenty-a.

Such certificates of indebtedness shall be signed by the supervisor and the town clerk and shall bear interest at a rate not exceeding six per centum for a period not exceeding one year. The amount so borrowed shall be paid out by the supervisor for the purposes for which the taxes, in anticipation of which such certificates were issued, are to be levied and collected. The principal

and interest of such certificates shall be paid by the supervisor immediately upon the collection of the taxes levied for such purposes.

Amended by L. 1918, ch. 321.

§ 97. Towns may borrow money for bridge and highway purposes. A proposition may be submitted at a regular or special town meeting in the manner provided by the town law, authorizing the town to borrow money upon its bonds, or other obligations, to be expended for the following purposes:

1. Constructing, building, repairing or discontinuing any highway or bridge therein, or upon its borders.

2. Repairing or rebuilding any highway or bridge or board walk, or renewal thereof, on any highway less than two rods in width, which shall at any time be damaged or destroyed by the elements or otherwise, or become unsafe for public use and travel.

Amended by L. 1915, ch. 322.

3. Repairing or rebuilding any bridge which has been condemned by the commission, as provided in this chapter.

4. The purchase of stone crushers, steam rollers and traction engines.

The vote upon any such proposition shall be by ballot. If any such proposition shall be adopted, the board of supervisors, upon the application of the town board, shall by resolution authorize the town to issue bonds not exceeding the amount specified in said proposition, which shall be sufficient to refund and pay any temporary loan or certificate of indebtedness, and to provide for the completion of any work authorized. There shall accompany such application a statement signed by a majority of the members of the town board, and certified by the town clerk, containing a copy of the proposition submitted, as above provided, the vote for and against the same, and specifying the amount which it is estimated will be required to be expended, pursuant to such proposition. If the highway or bridge, proposed to be constructed, built, repaired or discontinued, is situated in two or more towns in the same county, the board of supervisors shall, if application be made by any one of such towns, apportion the expense thereof among such towns, in such proportion as shall be just. If the town adopting any such proposition shall contain

any portion of the land of the forest preserve, the board of supervisors shall not authorize such town to borrow moneys without the written approval of the forest, fish and game commissioner, except in payment of a debt lawfully incurred by the town.

Amended by L. 1914, ch. 202.

**§ 97-a. Power of certain towns in the Adirondack park to borrow money for highway purposes.** No money shall be borrowed, as provided in sections ninety-six and ninety-seven of this act, by a town containing lands of the Adirondack park, where the assessed value of the real property of the state equals or exceeds twenty-five per centum of the assessed value of the taxable property of the town, until the consent, in writing, of the state comptroller that such loan or loans be made, be procured and filed in the office of the town clerk of the town intending to negotiate the loan or loans. Any loan made in violation of this section, for an indebtedness thereby intended to be created, shall be null and void and no moneys of the town shall be paid thereon.

Local — Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, Saratoga, St. Lawrence, Warren and Washington counties.

Added by L. 1917, ch. 565.

**§ 98. Issue and sale of town bonds.** The board of supervisors shall, from time to time, impose upon the taxable property of the town a tax sufficient to pay the principal and interest of such obligations as they shall become due. The supervisors and town clerk shall each keep a record, showing the date and amount of the obligations issued, the time and place of their payment, and the rate of interest thereon. The obligations shall be delivered to the supervisor of the town, who shall dispose of the same for not less than par and apply the proceeds thereof for the purposes for which they were issued.

Amended by I. 1916, ch. 578.

**§ 99. Assessment of village property.** In any town in which there may be an incorporated village, which forms a separate road district, and wherein the roads and streets are maintained at the expense of such village, all property within such village shall be exempt from the levy and collection of taxes levied in the town as provided by section ninety-one of this article, for the repair and improvement of highways, including sluices, culverts

bridges having a span of less than five feet. The assessors of such town shall indicate in a separate column the value of the real and personal property included in such incorporated village.

§ 100. **Statement by clerk of board of supervisors.** The clerk of the board of supervisors of each county shall, on or before the first day of January of each year, transmit to the state comptroller and the commission a statement, signed and verified by the chairman of the board, and certified by the clerk, which shall state the name of each town, the assessed valuation of real property, and the assessed valuation of personal property, each separately, in the towns outside incorporated villages, and the amount of tax levied therein for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet. The towns' valuation of real property to be used in such statement shall be the valuation thereof, as equalized by the boards of supervisors, or other competent authority, during the year prior to the levy of taxes upon which is based the determination of the amounts to be paid to the several towns, as provided in this article.

**Object of statement.** The purpose of this statement is to afford the state comptroller and the commission information sufficient to permit a payment to each town of the amount to which it is entitled under section 100. The amount so to be paid to each town is based upon the amount of taxes levied therein for the repair and improvement of highways. The final estimate of the amounts to be raised for highway purposes within the town being approved by the town board, and submitted to the board of supervisors it becomes the duty of the board to levy a tax upon the town sufficient to meet highway requirements during the ensuing year. The amount of taxes levied for the repair and improvement of highways should be kept separately from the taxes levied for the other purposes mentioned in such estimate so that the clerk of the board of supervisors may prepare the statement required by this section.

State aid is not only allowed on account of moneys raised for the repair and improvement of highways. If an additional amount is raised for such repair and improvement, as provided in section 92, it should be included in the statement.

§ 101. **Amount of state aid.** There shall be paid by the state to the several towns, in the manner hereinafter provided, an amount based upon the amount of taxes levied therein for the repair and improvement of highways, sluices, culverts and bridges having a span of less than five feet, and to be determined as follows:

1. In towns where the assessed valuation of real and personal property, exclusive of such property in incorporated villages, shall be less than five thousand dollars for each mile of highways in such towns, outside of incorporated villages, an amount equal to the amount of such taxes.

2. In towns where such assessed valuation shall be five thousand dollars or over and less than seven thousand dollars for each mile of such highways, an amount equal to ninety per centum of the amount of such taxes.

3. In towns where such assessed valuation shall be seven thousand dollars or over and less than nine thousand dollars for each mile of such highways, an amount equal to eighty per centum of the amount of such taxes.

4. In towns where such assessed valuation shall be nine thousand dollars or over and less than eleven thousand dollars for each mile of such highways, an amount equal to seventy per centum of the amount of such taxes.

5. In towns where such assessed valuation shall be eleven thousand dollars or over and less than thirteen thousand dollars for each mile of such highways, an amount equal to sixty per centum of the amount of such taxes.

6. In towns where such assessed valuation shall be thirteen thousand dollars or over for each mile of such highways, an amount equal to fifty per centum of such taxes. Provided that no town shall receive from the state in any year, under this section, an amount exceeding an average of twenty-five dollars per mile, for the total mileage of its highways outside of incorporated villages, except that in towns where the assessed valuation of real and personal property therein, exclusive of such property in incorporated villages, averages more than twenty-five thousand dollars for each mile of highways therein outside of such villages, the amount paid hereunder shall not exceed one-tenth of one per centum of such assessed valuation.

7. Where a town, having within its limits an incorporated village or city of the third class, shall levy a tax upon the whole town including such incorporated village or city, the same to be spent wholly without the limits of such village or city, for the repair and improvement of highways, sluices, culverts and bridges having a span of less than five feet, the amount of such tax shall be included in the statement to be transmitted by the clerk of the board of supervisors to the comptroller as required by section one

hundred of the highway law and such amount shall be used as an additional basis of the amount of state aid under this section, the same as if such tax were levied wholly without the limits of such incorporated village or city of the third class.

Added by L. 1913, ch. 375.

§ 102. **Mileage and assessed valuation.** The mileage of highways in towns to be used in determining the amounts to be paid to such towns under the provisions of this article shall be the tables of mileage heretofore prepared by the state engineer, until the corrected tables of mileage prepared as provided in section fifteen of this chapter are filed. Such tables and all corrections thereof shall be filed with the commission and comptroller. The assessed valuation of real property to be used in determining such amounts shall be the valuation thereof, equalized as provided in section one hundred and forty-one of this chapter, during the year prior to the levy of taxes upon which is based the determination of the amounts to be paid to the several towns, as provided in this article.

§ 103. **Payment and distribution of state money.** The comptroller shall determine the amount due to the several towns, under the provisions of this article, and shall draw his warrant upon the state treasurer in favor of the county treasurer of each county for the total amount to be paid to the towns in such county, as so determined by him, and shall indicate the amount to be paid to each town. The county treasurer shall pay to the supervisor of each town the amount to which such town is entitled, as determined and indicated by the comptroller. No such payment shall be made until the supervisor has filed in the office of the county treasurer a certified copy of the undertaking given by him, as provided in this article.

§ 104. **Custody of highway moneys; undertaking of supervisor.** All moneys levied and collected, as provided in this article, all moneys collected as penalties under this chapter, or received from any other source and available for highway, bridge and miscellaneous purposes and all moneys received from the state, as provided in section one hundred and one, shall be paid to the supervisor, who shall be the custodian thereof, and accountable therefor. Before receiving any such moneys the supervisor shall give an undertaking to the town in an amount to be specified by

the commission and with such sureties, as shall be approved by the town board, conditioned for the faithful disbursement, safe-keeping and accounting of the moneys so received by him. Such undertaking shall be filed in the office of the town clerk and a certified copy thereof shall be filed in the office of the county treasurer before any moneys received from the state shall be paid to him, and also in the office of the commission. In case of a failure of the supervisor to faithfully disburse, safely keep or account for moneys received from the state the commission may bring an action on such bond in the name of the town.

**§ 105. Expenditures for repair and improvement of highways.**

The moneys levied and collected for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet and board walks or renewals thereof, on highways less than two rods in width, and the moneys received from the state, as provided by section one hundred and one, shall be expended for the repair and improvement of such highways, sluices, culverts and bridges and walks, at such places and in such manner as may be agreed upon by the town board and town superintendent. The town board and the town superintendent shall constitute a board for the purpose of determining the places where and the manner in which such moneys shall be expended. Such agreement shall be written and signed in duplicate by a majority of the members of the board so constituted, and shall be approved by the commission, before the same shall take effect. One of such duplicates shall be filed in the office of the town clerk and one in the office of the district or county superintendent. Such moneys shall be paid out by the supervisor on the written order of the town superintendent in accordance with such written agreement. The town board and town superintendent may also appropriate from such moneys such a sum of money as they deem proper for the construction or repair of any public road, walk, place or avenue upon any sand beach separated by more than two miles of water from the main body of the town, although such road, walk, place and avenue is narrower than the width of highways required by statute, but the construction or repair of any such road, walk, place or avenue with such moneys on any such beach shall not be construed as imposing any liability upon the town or upon the superintendent of highways for any injury to person or property happening thereon.

Amended by L. 1914, ch. 84, and L. 1915, ch. 322.

**§ 106. Expenditures for bridges and other highway purposes.** The moneys levied and collected, or raised by the issue and sale of bonds or certificates of indebtedness in anticipation of taxes, as provided in this article, for purposes other than the repair or improvement of highways, as specified in the preceding section, shall be paid out by the supervisor upon the written order of the town superintendent. An account shall not be so paid unless the expenditure be in accordance with the annual estimate of the town superintendent, as approved or modified by the town board, or be authorized by the town board or by a vote of a town meeting, as provided in this article, or be lawfully a charge upon the town. Except as herein otherwise provided the provisions of the town law relating to the audit of town accounts and claims shall apply to accounts and claims against the town arising under this chapter.

Amended by L. 1916, ch. 463.

**§ 107. Reports of supervisor as to highway moneys.** The supervisor shall present to the town board at its meeting held in each year, for considering the estimates contained in the statement of the town superintendent, as provided in section ninety-one, a verified report showing:

1. The moneys received from the state, as provided in section one hundred and one during the year ending October thirty-first.

2. The moneys received by him during such year on account of taxes levied and collected and from the issue and sale of bonds and certificates of indebtedness in anticipation of taxes, for highways, bridges, purchase and repair of machinery, tools and implements, the removal of obstructions caused by snow and for miscellaneous purposes.

3. The moneys received by him during such year as penalties recovered pursuant to this chapter, or from any other source and available for highway purposes in his town.

4. The expenditures during such year for the improvement, repair and maintenance of highways, for the maintenance and repair of bridges, for the construction of new bridges, for damages and charges in laying out, altering and discontinuing highways, for the removal of obstructions caused by snow, for the purchase of machinery, tools and implements, for the rental or hire of stone crushers, steam rollers and traction engines, for town superintendents' salary or compensation and audited expenses. for

allowances as fees on account of receiving and disbursing highway moneys, or for other highway purposes.

5. All machinery, tools and implements owned in whole or in part by the town, the present value of each article thereof, and the estimated cost of all necessary repairs thereto, as shown by the annual inventory of the town superintendent.

The form of such report shall be prescribed by the commission. Such report shall be filed in the office of the town clerk within three days after the presentation thereof and shall be open to public inspection during the office hours of such town clerk and a duplicate shall at the same time be mailed to the commission. A certified copy of such report shall also be filed by the supervisor with the clerk of the board of supervisors, who shall cause the same to be printed in the next issue of the annual proceedings of the board of supervisors. The town board shall cause a certified copy of the report to be published in a newspaper published in the town, or if there be none published therein, then in a newspaper published within the county and having the greatest circulation within the town. The expense of such publication, which shall not exceed ten dollars, shall be a town charge. The clerk of the board of supervisors shall transmit three copies of the journal of the proceedings of the board containing such report to the commission and three copies to the comptroller.

The report is to be presented at the meeting of the town board held on the Thursday succeeding general election day in each year. This is the annual audit meeting of the board in most towns. It is at this meeting that the estimate of the town superintendent is presented and considered. The result is that the town board at the time that it revises the town superintendent's estimate for the succeeding year has before it the report of the supervisor as to the expenditures of town moneys for highway purposes in the preceding year.

§ 108. Highway accounts, forms and blanks. The commission shall prescribe the method of keeping town accounts of moneys received and expended, as provided in this article, for highways, bridges, purchase, leasing, rental or hire and repair of machinery, tools and implements, the removal of obstructions caused by snow, and miscellaneous purposes, which shall be uniform, so far as practicable, throughout the state. Such commission may adopt forms and blanks for keeping such accounts. The commission shall also prescribe the form of order to be made by the town

superintendent, upon the supervisor, and the form of the agreement to be entered into by the town board and town superintendent as provided in section one hundred and five. The town superintendent and supervisor shall keep their accounts in the method, and shall use the blanks and forms, prescribed by the commission. All orders and records of accounts shall be filed in the town clerk's office and preserved as a part of the town records.

**§ 109. Duty of town clerk.** It shall be the duty of the town clerk, annually, between the fifteenth day of November, and the fifteenth day of December, to transmit to the commission a list containing the names of each supervisor, town superintendent, justice of the peace, town clerk, assessor and collector, showing his post office address, the date of his appointment or election and the expiration of his term of office.

**§ 110. Compensation of supervisor and town clerk.** The supervisor and town clerk of each town shall receive annually, as compensation for services under this chapter in lieu of all other compensation and fees, an amount to be fixed by the town board. Such compensation shall be a town charge.

**§ 111. Additional expenditure for improvement, repair and maintenance of town highways.** Upon the written application of twenty-five taxpayers of a town, filed with the town clerk, the electors thereof may, at a regular or special town meeting, vote by ballot upon a proposition for the expenditure of a sum, not exceeding one-third of one per centum of the total taxable property of the town, including incorporated villages, in addition to the sum authorized by this chapter for the improvement, repair and maintenance of town highways in such town. Such proposition shall be submitted in the manner provided by law for the submission of questions or propositions at a town meeting. If such proposition be adopted, the amount specified therein shall be a town charge and shall be levied and collected in the same manner as other town moneys, and when collected shall be paid to the supervisor and expended for the purposes specified in such proposition as provided in this chapter.

The object of this section is to authorize the raising of a special amount for the repair, improvement and maintenance of town highways. It permits of a submission to the vote of a town meeting of the question as to the

amount which shall be expended each year upon the town highways, whenever it is thought desirable to make more extensive improvements than the town board and town superintendent have decided upon. This section permits a town meeting to control the amount to be expended where it seems that the town board has been too conservative in its estimates.

## ARTICLE VI.

### State and County Highways.

Section 120. Highways to be constructed or improved by the state.

121. Apportionment of mileage of State highways to be constructed or improved.
122. Construction or improvement of county highways.
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124. Examination of county highway; approval or disapproval by commission.
125. Maps, plans, specifications and estimates.
- 125-a. Construction or improvement of State or county highway.
126. Submission of maps, plans and specifications to district or county superintendent.
127. Action of commission in respect to maps, plans, specifications and estimates.
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132. Responsibility of State superintendent of highways for the performance of contracts for construction or improvement of State and county highways; suspension of work under contract, completion by State superintendent of highways.
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- 137-a. State and county highways in certain cities of the second and third class.
138. Connecting highways in villages.
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141. Division of cost of county highways; payments by county treasurer.
- 141-a. Alternative method of apportioning the expenses of county highways.
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- Section 143. Apportionment and payment of expenses of constructing county highway through or into cities of the second and third classes.
144. Payment of cost of state highway.
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  150. Petition to acquire lands.
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  155. Land may be sold or leased; disposition of proceeds.
  156. Application of provisions of labor law.
  157. Highways and bridges on Indian reservations.
  158. Appointment of reservation superintendent.
  159. Custody of moneys, et cetera.
  160. Maintenance of detours during construction.

**§ 120. Highways to be constructed or improved by the state.**

The highways which have been heretofore constructed or improved under the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof, which are included in the routes hereinafter described, together with such other highways as are constructed or improved by the commission in accordance with the routes set forth and described in this section, shall be state highways and shall be constructed or improved at the sole expense of the state as provided in this article. Such routes are hereby set forth and described as follows:

Route 1. Commencing at a point on the dividing line between Westchester county and New York, and running thence northerly through Mount Vernon to the dividing line between the town of Eastchester and the city of Mount Vernon, thence northerly along Post road to White Plains, thence southeasterly along Westchester avenue to Purchase street, thence northerly by Purchase street, by Rye lake and King street to state road, thence northerly by same to Armonk, thence easterly and northeasterly through the town of North Castle to Bedford village, thence northerly to Katonah, thence along the east side of the Croton river by Golden's bridge and Purdy's station to a point on the dividing line between Putnam and Westchester counties at or near Croton Falls, running thence northerly through the eastern portion of Putnam county by the way of Brewster, to a point

on the dividing line between Dutchess and Putnam counties at or near Patterson, running thence northerly by the way of Pawling, Wingdale, Dover Plains, Amenia, to a point to be determined by the commission, on the dividing line between Columbia and Dutchess counties, running thence northerly in Columbia county by way of Copake to Chatham, thence northwesterly to a point at or near Valatie, running thence northerly to a point to be determined by the commission, on the dividing line between Rensselaer and Columbia counties, running thence northerly and northwesterly through the southwestern portion of Rensselaer county to a point to be determined by the commission on the Hudson river opposite or nearly opposite the city of Albany.

AN ACT in relation to the abandonment of a portion of state route number one, in the county of Dutchess, and the construction of a substitute highway in place thereof by the state commission on new prisons under the direction of the state commissioner of highways.

Section 1. The state commission on new prisons is hereby authorized to construct, under the direction and to the satisfaction of the state commissioner of highways and in accordance with plans, specifications and estimates prepared by him, a substitute highway to take the place of such portion of state route number one, state highway number five thousand three hundred and twenty-six, as abuts on the present prison site at Wingdale, Dutchess county, or otherwise, in the opinion of such commission, interferes with the proper development of such property for the purpose of maintaining a prison thereon. Such substitute highway may be located on such prison site or partly on such site and partly without the bounds thereof.

§ 2. The state commission on new prisons for the purpose of constructing such substitute highway may acquire by purchase such additional lands outside of the bounds of such prison property as may be necessary for the construction of such substitute highway, or, in the opinion of the state commissioner of highways, may be necessary to make suitable connections with the remaining portions of state highway number five thousand three hundred and twenty-six. Such commission may also purchase from the county of Dutchess at the price paid by such county to the original owner, any land now included within the bounds of such prison property, heretofore acquired for the construction

of a portion of state route number five thousand three hundred and twenty-six.

§ 3. The state commission on new prisons shall employ or cause to be employed, so far as practicable, for the construction of such highway convicts confined in a state prison. The agent or warden of a prison may make such rules as he may deem necessary for the proper care, custody and control of such convicts when so employed, subject to the approval of the superintendent of state prisons.

§ 4. The state commission on new prisons may purchase equipment, implements and materials needed for the purpose of carrying out the provisions of this act.

§ 5. The expense of constructing such substitute highway, including surveys, plans, specifications and estimate of cost, inspection and supervision, land, equipment, implements, materials and the amount authorized by this act to be paid to the county of Dutchess for the land heretofore acquired by such county within the bounds of the prison property, shall be deemed a portion of the cost of construction of a state prison on the Wingdale site, and money appropriated by the state for the construction of such prison shall be available for the purposes of this act. Of the funds available for the construction of such prison a sum not exceeding one thousand dollars is hereby made immediately available on the requisition of the state commissioner of highways for necessary expenses in making a preliminary survey, preparation of plans, specifications and estimate of cost and for the inspection and supervision of the work provided for by this act.

§ 6. When such substitute highway is complete the state commissioner of highways may accept the same for maintenance in accordance with sections one hundred and thirty-three and one hundred and seventy-a of the highway law, and thereupon the portion of state highway number five thousand three hundred and twenty-six which lies within the bounds of the Wingdale prison property shall be deemed abandoned as a public highway, and the substitute highway constructed pursuant to this act shall be deemed a part of state route number one, state highway number five thousand three hundred and twenty-six.

L. 1918, ch. 391.

Route 2. Commencing at Jerome avenue on the dividing line between Westchester county and New York city and running

thence northerly along Jerome avenue and Central Park avenue to Hartsdale, thence along the Sprain road and Landers road to Fair Grounds, thence northerly to cross road between Greenburgh, and Mount Pleasant, thence westerly along the same to the Saw Mill River road and the Tarrytown Lake road to Bedford road, thence along the Sleepy Hollow road northerly and westerly to the Albany post road, thence northerly along Albany post road through Briar Cliff, Ossining and Croton Landing, thence along Old Yorktown road to Cornell Dam, thence along westerly side of Groton lake to Dixie Hill, thence northerly along Croton avenue to Crompond road, thence westerly along Crompond road through Peekskill to Albany post road, thence northerly from Peekskill, to a point to be determined by the commission, on the dividing line between the towns of Phillipsburg, Putnam county, and Cortlandt, Westchester county, running thence northerly through the western portion of Putnam county to a point to be determined by the commission, on the dividing line between Dutchess and Putnam counties, running thence northerly by the way of the city of Poughkeepsie and Rhinebeck, to a point to be determined by the commission, on the dividing line between Columbia and Dutchess counties, running thence northerly, through Blue Store and Johnstown to Bell's Pond, and thence northerly along the Ancram turnpike and North avenue, to the city of Hudson, running thence northeasterly from the city of Hudson to a point at or near Valatie, connecting with route number one, as above described.

Amended by L. 1910, ch. 648.

Route 3. Commencing at a point to be determined by the commission, on the dividing line between the towns of Orangetown, Rockland county, and the state of New Jersey, running thence northerly through the eastern portion of Rockland county by the way of points at or near Nyack and Haverstraw, over the Sparkill and Stony Point viaducts to be constructed and maintained by the commissioners of the Palisades interstate park on piers and abutments and with a roadway, approaches and sidewalks to be constructed and maintained by the commission, to a point to be determined by the commission, on the dividing line between Orange and Rockland counties, running thence northerly through the eastern portion of Orange county to the city of Newburgh,

thence northerly from the city of Newburgh to a point to be determined by the commission, on the dividing line between Ulster and Orange counties, running thence northerly through the eastern portion of Ulster county to a point on the Rondout creek at or near the present chain ferry known as the "Sleightsburgh Ferry," thence over said creek into the city of Kingston by suitable bridge to be constructed and maintained by the commission, running thence northerly from the city of Kingston to a point to be determined by the commission, on the dividing line between Greene and Ulster counties, running thence northerly through the eastern portion of Greene county to points at or near Catskill, Athens and Coxsackie, to a point to be determined by the commission, on the dividing line between Albany and Greene counties, running thence northerly to the city of Albany.

Amended by L. 1912, ch. 157, and L. 1919, ch. 468.

Route 3-a. Commencing at a point, to be determined by the commission, on the Delaware river at or near the city of Port Jervis in Orange county, running thence northwesterly along the Delaware river, as nearly as practicable, to a point to be determined by the commission on the dividing line between Sullivan and Delaware counties, thence to the village of Hancock, connecting with route number four.

Added by L. 1911, ch. 260.

Route 4. Commencing at a point to be determined by the commission on route number three, running thence through Orange county by the way of Middletown to a point to be determined by the commission, on the dividing line between Sullivan and Orange counties, running thence westerly and northerly through Sullivan county by the way of Monticello to a point to be determined by the commission, on the dividing line between Delaware and Sullivan counties, thence to Deposit, on the dividing line between Broome and Delaware counties, running thence westerly by the way of Windsor to the city of Binghamton, running thence westerly from the city of Binghamton by the way of Lestershire and Endicott, to a point to be determined by the commission, on the dividing line between Tioga and Broome counties, running thence westerly through the southern portion of Tioga county, to a point to be determined by the commission, on the dividing line between Chemung and Tioga counties, running thence westerly and north-

westerly through the southern portion of Chemung county, to the city of Elmira, running thence northerly from the city of Elmira to a point at or near Horseheads, running thence westerly to a point to be determined by the commission on the dividing line between Steuben and Chemung counties, running thence westerly and northwesterly by the way of Corning, Addison and Canisteo, to the city of Hornell, running thence northwesterly and southwesterly from the city of Hornell to a point at or near Almond on the dividing line between Allegany and Steuben counties, running thence southwesterly to Wellsville, running thence northwesterly and westerly by the way of Belmont, Belvidere and Friendship and Cuba, to a point to be determined by the commission on the dividing line between Cattaraugus and Allegany counties, running thence southwesterly to the city of Olean, running thence westerly and northwesterly from the city of Olean by the way of Salamanca, Little Valley, Napoli and Randolph, to a point to be determined by the commission, on the dividing line between Chautauqua and Cattaraugus counties, running thence westerly to the city of Jamestown, thence northwesterly by the way of Mayville, to Westfield.

Amended by L. 1911, ch. 96 and ch. 747.

Route 4-a. Beginning at the city of Binghamton, on route number four, running thence northerly and northwesterly to Whitney Point, running thence northwesterly along the Tioughnioga river, by way of Lisle and Killawog, through a point to be determined by the highway commission on the dividing line between Broome and Cortland counties, to Marathon, and from thence through Messengerville and Blodgett Mills, to Cortland, as determined by the commission, connecting thereat with route number nine.

Amended by L. 1911, ch. 807.

Route 4-b. Beginning at a point on route number four to be determined by the commission, at or near Canisteo, in the county of Steuben, running thence southerly by way of Greenwood to Rexville; running thence southerly and westerly to a point to be determined by the commission on the dividing line between the counties of Steuben and Allegany; and running thence southerly and westerly to Whitesville, Allegany county.

Amended by L. 1912, ch. 474.

Route 5. Commencing at the city of Kingston, running thence to a point on the boulevard to be erected by the city of New York near the present village of West Hurley, thence northerly and westerly by the way of Woodstock, Bearsville and Pine Hill, to a point to be determined by the commission, on the dividing line between Delaware and Ulster counties, running thence westerly to Margaretville, running thence northerly by the way of Roxbury to Grand Gorge, running thence northwesterly to a point to be determined by the commission, on the dividing line between Schoharie and Delaware counties, running thence northwesterly and westerly to a point to be determined by the commission, on the dividing line between Delaware and Schoharie counties, running thence northwesterly and westerly by the way of Harpersfield, North Kortright and Davenport, to a point to be determined by the commission, on the dividing line between Otsego and Delaware counties, running thence to Oneonta, Otsego county, running thence northeasterly along route number seven to Colliers; running thence northerly in Otsego county by the way of Coopers-town and Richfield Springs to a point to be determined by the commission, on the dividing line between Herkimer and Otsego counties; running thence northerly to Mohawk connecting with route number six.

Amended by L. 1910, ch. 573.

Route 5-a. Commencing at a point on route number three, in the village of Catskill; thence northwesterly to the village of Cairo; thence by South Durham through East Windham to the village of Windham; thence westerly through the villages of Ashland and Prattsville to a point, to be determined by the commission, on the dividing line between Greene and Delaware counties.

Amended by L. 1911, ch. 616.

Route 5-b. Commencing at a point on route number five-a, in the village of Cairo, in the county of Greene; thence westerly through the village of East Durham to the village of Durham; thence northerly to a point to be determined by the commission on the dividing line between Greene and Albany counties; thence northerly to the village of Cooksburg, and connecting thereat with a highway heretofore improved by the state leading from Potter's Hollow to such village.

Amended by L. 1911, ch. 784.

Route 5-c. Commencing in the village of Palenville, so-called, on the northerly side of the creek at a point where the Kaaterskill road intersects the Catskill-Tannersville highway in the town of Catskill, Greene county; thence westerly through the Kaaterskill clove to a point where the easterly entrance leading to Twilight park intersects said Catskill-Tannersville highway, and over a route to be determined by the commission.

§ 2. The sum of one hundred and ninety thousand dollars (\$190,000), or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury, not otherwise appropriated, to be expended, except as herein otherwise provided, in the manner provided for by article six of the highway law, for the construction and improvement of state route five-c, as established by this act. The state commission of highways may construct and improve such route by contract or by the purchase of material and securing of labor in the open market, or partly by each method, or wholly or partly by forces of the state department of highways. If such construction and improvement be made wholly by contract, maps, specifications and estimates shall be made, proposals advertised for and the contract awarded as provided in article six of the highway law, and if specified parts or items only of such construction and improvement be done by contract the provisions of such article of the highway law shall govern the making of maps, estimates and specifications and the awarding of contracts therefor so far as they may be made applicable. Such commission may, in its discretion, use convict labor, as hereinafter provided, in the construction and improvement of such route or parts thereof, or with respect to certain items of the work. The superintendent of state prisons is hereby authorized to furnish available convict labor therefor, upon the application of such commission. The expense of maintenance of convicts while so employed shall be paid from the moneys herein appropriated in the same manner as other expenses of such construction and improvement. The officers and guards of the prison department shall have the charge and custody of such convicts, but the engineers and foremen of the highway department shall direct the work to be done; and nothing herein contained shall be construed to authorize the employment of such convict labor for a person, firm, association or corporation contracting with such

commission for the performance of any part or item of such construction or improvement. Moneys expended directly for material, labor and cost of maintenance of convicts shall be paid out by the state treasurer upon the audit and warrant of the comptroller upon vouchers approved by such commission.

Added by L. 1913, ch. 784 and amended by L. 1914, ch. 68.

Route 6. Commencing at a point to be determined by the commission at the city of Albany, running thence northwesterly to a point to be determined by the commission, on the dividing line between Schenectady and Albany counties, running thence northwesterly to the city of Schenectady, running thence northwesterly from the city of Schenectady to a point to be determined by the commission, on the dividing line between Montgomery and Schenectady counties, to the city of Amsterdam, thence crossing the Mohawk river to the south side, thence along the south side through Fort Hunter to the village of Fultonville, thence across the river to the north side, running thence westerly and northwesterly through Montgomery county by the way of Fonda and St. Johnsville, to a point at or near East Creek, on the dividing line between Herkimer and Montgomery counties, running thence westerly and northwesterly by the way of Little Falls and Herkimer, from Herkimer westerly by the way of Mohawk, Ilion and Frankfort to a point to be determined by the commission, on the dividing line between Herkimer and Oneida counties, and thence to the city of Utica, running thence westerly from the city of Utica to Oneida, on the dividing line between Madison and Oneida counties, running thence westerly by the way of Chittenango, to a point to be determined by the commission on the dividing line between Onondaga and Madison counties, running thence westerly by the way of Fayetteville, to the city of Syracuse, running thence from the city of Syracuse by the way of Camillus and Elbridge, to a point to be determined by the commission, on the dividing line between Cayuga and Onondaga counties, running thence southwesterly to the city of Auburn, running thence from the city of Auburn to a point to be determined by the commission on the dividing line between Seneca and Cayuga counties, running thence westerly to Seneca Falls, thence southerly through the village of Seneca Falls to the south side of Seneca lake outlet, thence westerly on the south side of Seneca lake outlet to a point at the foot of Seneca lake, running thence westerly to a point to be determined by the commission on the

dividing line between Ontario and Seneca counties, running thence westerly to Geneva, running thence westerly from Geneva to Canandaigua, running thence westerly to a point to be determined by the commission, on the dividing line between Livingston and Ontario counties, running thence westerly by the way of Avon and Caledonia, to a point to be determined by the commission, on the dividing line between Genesee and Livingston counties, running thence westerly by the way of Batavia, to a point to be determined by the commission, on the dividing line between Erie and Genesee counties, running thence westerly to the city of Buffalo, Erie county.

Amended by L. 1910, ch. 573 and L. 1911, ch. 472.

Route 6-a. Commencing at and intersecting route number six in the town of Tyre, in the county of Seneca, at a point known as Dutcher's Corners, thence westerly along the road known as the old free-bridge state road through the towns of Tyre and Junius to a point, to be determined by the commission, on the dividing line between the counties of Seneca and Ontario near the railroad station at West Junius on the Pennsylvania division of the New York Central and Hudson River railroad running from Lyons to Geneva; thence, passing such station, along said old free-bridge state road to the village of Phelps.

Amended by L. 1911, ch. 660.

Route 7. Commencing at a point to be determined by the commission on the dividing line between the town of Binghamton in Broome county, and Pennsylvania, running thence northerly to the city of Binghamton; running thence northerly and northeasterly from the city of Binghamton on the east side of Chenango river, by the way of Port Crane, Sanitaria Springs and Harpursville, to Nineveh, on the dividing line between Chenango and Broome counties, running thence northeasterly along the Susquehanna valley, to a point to be determined by the commission, on the dividing line between Chenango and Otsego counties, at or near Sidney, running thence northeasterly along the Susquehanna valley to Oneonta, running thence northeasterly from Oneonta by way of Maryland and Worcester, to a point to be determined by the commission, on the dividing line between Schoharie and Otsego counties, running thence easterly by the way of Cobleskill to a point to be determined by the commission, on the dividing

line between Albany and Schoharie counties at or near West Berne, to Berne, thence to East Berne, thence to a point at Thompson's Lake, known as Secor's Church, thence to the top of the present so-called "Indian Ladder" road, thence in a southerly direction to New Salem, and thence to New Scotland, Slingerlands, and to the city of Albany.

Amended by L. 1911, ch. 261 and ch. 751.

Route 7-a. Commencing at the city of Schenectady on route number six and running southwesterly to Duanesburg, in the county of Schenectady; thence in a general southwesterly direction, along a course to be determined by the commission, to a point to be determined by the commission upon route number seven in the town of Schoharie in Schoharie county.

Amended by L. 1912, ch. 183.

Route 8. Commencing at the city of Binghamton, running thence northerly on the west side of the Chenango river to Chenango Forks, on the dividing line between Chenango and Broome counties, running thence along the west bank of the Chenango river to North Norwich, running thence northerly by the way of Sherburne to Earlville, on the dividing line between Madison and Chenango counties, running thence northerly by the way of Hamilton and Bouckville, to a point at or near Oriskany Falls, on the dividing line between Oneida and Madison counties, running thence northeasterly by the way of Deansboro to a point to be determined by the commission connecting with route number six.

Route 8-a. Commencing at the New York State Women's Relief Corps Home near the village of Oxford in the county of Chenango, running thence southerly and westerly to and into the village of Oxford and connecting with route number eight therein, upon and along the existing public highway between such points.

§ 2. The sum of fifteen thousand dollars (\$15,000), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the treasury not otherwise appropriated, to be expended by the state commission of highways in the manner provided by the provisions of article six of the highway law relating to the improvement of state routes.

Added by L. 1916, ch. 634.

Route 9. Commencing at a point to be determined by the commission, at or near Horseheads, Chemung county, New York, on route number four, running thence northerly and northeasterly by the way of Horseheads, Breesport and Erin to a point to be determined by the commission on the dividing line between Tioga and Chemung counties, running thence easterly and northeasterly by the way of North Spencer to a point to be determined by the commission on the dividing line between Tompkins and Tioga counties, running thence northerly to the city of Ithaca, running thence northeasterly by the way of a point to be determined by the commission at or near Dryden to a point to be determined by the commission on the dividing line between Cortland and Tompkins counties, running thence northeasterly to Cortland, thence northeasterly by the way of Truxton to a point to be determined by the commission on the dividing line between Madison and Cortland counties at or near De Ruyter, thence northerly to Cazenovia, thence easterly by the way of Morrisville to a point at or near Bouckville on route number eight.

Route 10. Beginning at the city of Syracuse, running thence southerly to a point to be determined by the commission on the dividing line between Cortland and Onondaga counties, running thence southerly by the way of Homer to Cortland, thence southeasterly by the way of McGrawville, Solon and Willet to a point to be determined by the commission on the dividing line between Chenango and Cortland counties, thence southeasterly by the way of Smithville Flats to Greene, thence easterly by the way of Coventry to Coventryville, thence southeasterly to Afton, connecting with route number seven.

Route 11. Commencing at the city of Ithaca, running thence northerly to a point to be determined by the commission, on the dividing line between Cayuga and Tompkins counties, running thence northerly to the city of Auburn.

Route 12. Commencing at a point at or near Horseheads, at a point to be determined by the commission, running thence northerly to a point to be determined by the commission, on the dividing line between Schuyler and Chemung counties, running thence northerly by the way of Watkins, to a point to be determined by the commission, on the dividing line between Yates and Schuyler counties, running thence northwesterly by the way of Dundee, to the village of Penn Yan, running thence northerly to a point

on the dividing line between Ontario and Yates counties, running thence northerly to the city of Geneva, running thence northerly from the city of Geneva, to a point to be determined by the commission, on the dividing line between Wayne and Ontario counties, running thence northerly to Lyons, connecting with route number twenty.

Route 13. Commencing at Bath, Steuben county, running thence northeasterly by the way of Hammondsport to a point to be determined by the commission on the dividing line between Schuyler and Steuben counties, thence northeasterly to a point to be determined by the commission on the dividing line between Yates and Schuyler counties, thence northeasterly to Dundee on route number twelve.

Route 14. Commencing at Corning, Steuben county, running thence northwesterly by the way of Bath, Avoca to Cohocton, running thence northerly from Cohocton, to a point to be determined by the commission on the dividing line between Ontario and Steuben counties, running thence northeasterly to Naples, running thence northerly from Naples to a point to be determined by the commission, connecting with route number six, running thence along route number six, to Black's Corners, and from thence to Holcomb; running thence northwesterly to a point to be determined by the commission on the dividing line between Monroe and Ontario counties, thence northerly to Pittsford, thence westerly, then northerly to the city of Rochester.

Amended by L. 1910, ch. 648.

Route 15. Commencing at the junction of Big Creek road and Seneca street road in the town of Hornellsville, Steuben county, running thence northwesterly within the county of Steuben to and through the village of Arkport, and northerly, within such county, along the road on the easterly side of Arkport valley, known as Dansville road, through Doty's Corners and by way of the Stony Brook Glen road in the town of Dansville, Steuben county, to the Livingston county line; thence through the town of North Dansville in Livingston county to the village of Dansville; thence northerly to the intersection of Gibson and South streets; thence northeasterly along Gibson street to Main street; thence northwesterly along Main street to the intersection of Main and Exchange streets; thence southwesterly along Exchange and South streets to the intersection of South and Gibson streets, and from

the intersection of Main and Exchange streets along the highway from Dansville to Groveland station on the east side of the Genesee valley through the towns of North \*Danville, Sparta and Groveland to Groveland Station; thence northerly along the highway leading from Groveland station to Geneseo on the east side of the Genesee valley in the town of Groveland to its intersection with the improved county highway running from Mount Morris to Geneseo; thence westerly through the towns of Groveland and Mount Morris to the village of Mount Morris; thence through the village of Mount Morris northwesterly and northerly by the way of the villages of Moscow and York Center to a point on route number six in the village of Caledonia; thence easterly along route six to Canawaugus; thence northerly to a point to be determined by the commission on the dividing line between Livingston and Monroe counties, thence northerly to route sixteen in Scottsville; also from the point where the street in the village of Arkport, Steuben county, intersects the north and south road leading from Hornell to Doty's Corners, running thence westerly about three-quarters of a mile, thence northwesterly and northerly to Van Scoters Corners, Allegany county, to connect with a proposed county highway in said county.

§ 2. The moneys appropriated by chapter five hundred and fifty-nine of the laws of nineteen hundred and eleven, for the improvement and completion of that part of route number fifteen between Hornell and to and through the village of Dansville, shall be immediately available for the construction of such route as hereby amended, including that portion thereof from the point where the street in the village of Arkport, Steuben county, intersects the north and south road leading from Hornell to Doty's Corners, running thence westerly about three-quarters of a mile, thence northwesterly and northerly to Van Scoters Corners, Allegany county, to connect with a proposed county highway in said county.

Amended by L. 1912, ch. 473.

Route 16. Commencing at the village of Cuba, Allegany county, running thence northeasterly by the way of Belfast and Caneadea, to a point to be determined by the commission, on the dividing line between Wyoming and Allegany counties, running thence northerly by the way of Pike, Gainesville and Rock Glen to

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\* So in original.

Warsaw, running thence northerly to a point to be determined by the commission, on the dividing line between Genesee and Wyoming counties, running thence northerly to the village of Le Roy, running thence along route number six to Caledonia, running thence northerly to a point to be determined by the commission on the dividing line between Monroe and Livingston counties, running thence northerly by the way of Scottsville to the city of Rochester.

Route 17. Commencing at a point to be determined by the commission on route number four at or near Hinsdale, running thence northerly by the way of Franklinville and Machias to a point to be determined by the commission near the dividing lines of Erie, Wyoming and Cattaraugus counties, running thence northwesterly by the way of East Aurora to the city of Buffalo.

Route 18. Commencing at a point to be determined by the commission, on the dividing line between Ripley, Chautauqua county, and the state of Pennsylvania, running thence northeasterly by the way of Westfield, Brocton, Fredonia, along the old Buffalo and Erie road, to a point to be determined by the commission, on the dividing line between Erie and Chautauqua counties, running thence northeasterly and northerly to the city of Buffalo, running thence northerly from the city of Buffalo to North Tonawanda, running thence northwesterly and westerly from North Tonawanda to the city of Niagara Falls, running thence northerly from Niagara Falls by the way of Lewiston to a point near the mouth of Niagara river, Niagara county.

Amended by L. 1911, ch. 89.

Route 19. Commencing at the city of Buffalo, running thence easterly to Marilla, thence southerly to Wales Center, thence easterly to a point to be determined by the commission on the dividing line between Wyoming and Erie counties, running thence easterly to Varysburg, thence northerly by the way of Attica to a point to be determined by the commission on the dividing line between Genesee and Wyoming counties, running thence northeasterly to Batavia, Genesee county, connecting with route number six.

Route 20. Commencing at a point on route number six, at or near Elbridge, in Onondaga county, running thence northerly to Jordan and westerly to a point to be determined by the commission, on the dividing line between Cayuga and Onondaga

counties, running thence northwesterly and southwesterly by the way of Port Byron and Montezuma, to a point to be determined by the commission, at or near the dividing lines between Wayne, Seneca and Cayuga counties, running thence northwesterly and westerly from Savannah, Clyde, Lyons and Newark to Palmyra, running in the county of Ontario south of the Erie canal a distance of about one mile, between Newark and Palmyra, entering and returning from the county of Ontario through such points as the commission may determine in the dividing line between the counties of Wayne and Ontario; running thence from Palmyra and Macedon to a point to be determined by the commission, on the dividing line between Monroe and Wayne counties, running thence northwesterly to the city of Rochester, Monroe county.

Amended by L. 1915, ch. 43.

Route 21. Commencing at a point on the Hudson river at or near Albany and running thence easterly to a point at or near Sand Lake, running thence southerly to a point at or near Nassau, in Rensselaer county, running thence southeasterly to a point to be determined by the commission, on the dividing line between Columbia and Rensselaer counties, to a point to be determined by the commission, on the dividing line between Columbia county and the state of Massachusetts.

Route 22. Commencing at a point in Rensselaer county at or near the city of Troy, running thence northeasterly by the way of Raymertown, to Potter Hill, running thence northerly through Hoosick Falls, to a point at or near Eagle Bridge, on the dividing line between Washington and Rensselaer counties, running thence northerly by the way of Cambridge, Salem and Granville by the way of Whitehall and the shore road along Lake Champlain to Putnam; and commencing at a point on route twenty-five at Riparius in Warren county, and running thence to a point to be determined by the commission on the dividing line between Essex and Warren counties, and running thence northerly by way of Schroon Lake village to Elizabethtown, running thence westerly to Keene, thence northerly to Ausable Forks and a point on the dividing line between Clinton and Essex counties, thence northeasterly to a point at or near Ausable Chasm, thence northerly by the way of Plattsburgh and Chazy to Rouses Point.

Route 22-a. Commencing at a point at the end of county highway petition number sixteen hundred and fifty-one, in the village

of Newman and running thence northeasterly through Wilmington Notch and High Falls to Hathaway Corners, thence northerly across Ausable river to Nye's Corners, thence easterly through the village of Wilmington to the village of Jay connecting with route number twenty-two, Essex county.

Amended by L. 1913, ch. 785 and L. 1914, ch. 201.

Route 22-b. Commencing at a point on county highway number eight hundred and ninety-one outside of the village of Ticonderoga and extending westerly through the towns of Ticonderoga and Schroon through the village of Chilson, to a point on route number twenty-two at or near Severance hill, being within the boundaries of the county of Essex.

Added by L. 1913, ch. 785.

Route 22-c. Commencing at a point on county highway number ten hundred and twenty-three, and running thence northerly and westerly to Pottersville on the easterly side of the Schroon river, terminating at route number twenty-two, all within the boundaries of Warren county.

Added by L. 1913, ch. 785.

Route 23. Commencing on the Cherry Valley turnpike at the westerly line of the village of West Winfield near the intersection of the three counties, Otsego, Oneida and Herkimer, running thence westerly to the village of Bridgewater, running thence northerly to the city of Utica, running thence northeasterly through the town of Deerfield to a point to be determined by the commission on the dividing line between Herkimer and Oneida counties, at or near Poland, there intersecting route number twenty-six, running thence northeasterly through Cold Brook, Wilmurt and Nobleboro to the Hamilton county line there joining the county highway of Hamilton county which leads through Morehouseville to Lake Pleasant, joining route twenty-four at Lake Pleasant and running thereon to Speculator, running thence northerly by way of Lewey Lake to Indian Lake village; thence northwesterly to Blue Mountain Lake there joining route twenty-five.

Amended by L. 1910, ch. 573 and L. 1914, ch. 47.

Route 23-a. Commencing on route six in the village of Ilion at its intersection with Otsego street, running thence southerly

through Cedarville, Chepachet and to the westerly line of the village of West Winfield, there connecting with route twenty-three.

Amended by L. 1912, ch. 535.

Route 24. Commencing at a point on route number six at Fonda, Montgomery county, running thence northerly to a point to be determined by the commission on the dividing line between Fulton and Montgomery counties, running thence northerly by the way of Johnstown and Gloversville to Northville, running thence northerly to a point to be determined by the commission on the dividing line between the counties of Hamilton and Fulton, running thence northerly to Lake Pleasant.

Route 25. Commencing at Whitesboro near Utica on route number twenty-eight in Oneida county, running thence northerly, by the way of Marcy, Holland Patent, Remsen, Alder Creek and White Lake Corners, to a point to be determined by the commission, at or near the dividing lines between Herkimer, Lewis and Oneida counties, running thence northeasterly by the way of Fulton Chain, and on or near the highways laid out, to a point to be determined by the commission, on the dividing line between Hamilton and Herkimer counties, running thence easterly by the way of Raquette Lake, and on the south shore of Raquette Lake, running thence northeasterly to Blue Mountain Lake, running thence northerly to Long Lake, running thence easterly to a point to be determined by the commission, on the dividing line between Essex and Hamilton counties, running thence easterly to Newcomb, running thence southeasterly by the way of Minerva, to a point to be determined by the commission, on the dividing line between Warren and Essex counties, running thence by the way of North Creek, Riparius and Warrensburg to Lake George, running thence southerly to a point to be determined by the commission on the dividing line between Saratoga and Warren counties at or near Glens Falls, running thence southerly by the way of Saratoga Springs to Ballston Spa, running thence southeasterly to a point to be determined by the commission on the dividing line between Albany and Saratoga counties, running thence southerly to a point to be determined by the commission at or near the city of Albany.

Route 26. Commencing in the village of Mohawk near the intersection of routes five and six, thence running easterly through

Jacksonburg to Little Falls, thence running northwesterly through Eatonsville, Middleville, Newport and Poland, across the corner of Oneida county, thence in Herkimer county to a point on the dividing line between Oneida and Herkimer counties near Gravesville, thence by the way of Trenton Falls to join route number twenty-five at or near Trenton.

Amended by L. 1910, ch. 573.

Route 27. Commencing at a point on route number twenty-five, to be determined by the commission near Alder Creek, running thence northwesterly by way of Booneville,\* to a point on the dividing line between Lewis and Oneida counties, running thence northerly by the way of Lowville, to a point at or near Carthage. on the dividing line between Jefferson and Lewis counties, running thence northwesterly and westerly to the city of Watertown, running thence northwesterly from the city of Watertown to Clayton, thence northeasterly to Alexandria Bay, Jefferson county.

Route 28. Commencing at the city of Utica, Oneida county, running thence northwesterly to Rome, running thence northwesterly from Rome, by the way of Camden, to a point to be determined by the commission, on the dividing line between Oswego and Oneida counties, running thence northwesterly by the way of Parish to Union Square, Oswego county.

Route 29. Commencing at Rome, running thence southwesterly to Oneida, being a point on the dividing line between Madison and Oneida counties.

Route 30. Commencing at Rouses Point, in Clinton county, running thence westerly through the northern part of Clinton county, to a point to be determined by the commission, on the dividing line between Franklin and Clinton counties, running thence westerly by the way of Burke, Malone and Moira, to a point to be determined by the commission, on the dividing line between Saint Lawrence and Franklin counties, running thence westerly to Lawrenceville, running thence southerly to a point at or near Nicholville, running thence westerly and southwesterly by the ways of Potsdam, Canton and Gouverneur, to a point to be determined by the commission, on the dividing line between

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\* So in original.

Jefferson and Saint Lawrence counties, running thence southwesterly by the way of Philadelphia to Watertown, running thence southerly from Watertown, by the way of Adams and Pierrepont Manor, to a point to be determined by the commission on the dividing line between Oswego and Jefferson counties, running thence southerly and southwesterly and westerly by the way of Pulaski and Union Square to Oswego, running thence southerly from Oswego by way of Hannibal to a point to be determined by the commission, on the dividing line between Cayuga and Oswego counties, running thence southwesterly through the northern part of Cayuga county to a point to be determined by the commission on the dividing line between Wayne and Cayuga counties, running thence southwesterly and westerly by the way of Red Creek, Wolcott, Alton, Sodus, Williamson and Ontario to a point to be determined by the commission on the dividing line between Monroe and Wayne counties, running thence southwesterly to the city of Rochester, running thence westerly from the city of Rochester by way of Spencerport, to a point to be determined by the commission, on the dividing line between Orleans and Monroe counties, running thence westerly to points at Albion and Medina, running thence northwesterly and northerly to Ridgway on the Ridge road; thence westerly along the Ridge road to Jeddox, Johnson Creek, Hartland Corners and Ridge Road Settlement; thence southwesterly to Wright's Corners; thence westerly through Warren's Corners and Cambria to a point two and five-tenths miles directly north of Pekin on the Ridge road; thence southerly along the Town Line road through Pekin to a point on the Saunders Settlement road to Sanborn; thence westerly and southwesterly along the Saunders Settlement road to Niagara Falls to connect with route number eighteen; continuing on the River road at the easterly city limits of the city of Niagara Falls and continuing along said river road to the northerly city limits of the city of North Tonawanda and thence southerly along said River road and Main street to the place of intersection of Island street in said city of North Tonawanda; also continuing a spur from the point in Center street in the village of Medina where said route thirty as above described turns toward the north, and from said point in said village of Medina continuing said spur west Center street and the \*country highway to and through

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\* So in original.

of Middleport and thence westerly along the settlement and canal roads to and through Gasport and thence continuing southerly to McNalls Corners and thence continuing westerly along the Lewiston road to the city of Lockport, in Niagara county. Also continuing a spur from the point in the Ridge road in the town of Ridgway where said route thirty as above described turns toward the west, and from said point at said Ridgway continuing said spur easterly along said Ridge road to the dividing line between Orleans and Monroe counties.

Amended by L. 1910, ch. 648; L. 1911, ch. 716; L. 1912, ch. 477 and L. 1914, ch. 276.

Route 30-a. Commencing at the point mentioned in the description of route twenty-seven at or near Carthage, on the dividing line between Jefferson and Lewis counties, running thence northerly and northwesterly to Antwerp in Jefferson county, terminating at and intersecting route thirty at or near Antwerp aforesaid.

Added by L. 1910, ch. 650.

Route 31. Commencing at Malone, Franklin county, running thence southerly by the way of a point at or near Duane and Meacham Lake to Saranac Junction.

Route 32. Commencing at Lawrenceville in Saint Lawrence county, running thence northerly to North Lawrence, running thence westerly to Brasher Falls, running thence southwesterly to Winthrop, running thence northerly to Massena, running thence northerly on the Town Line road between the towns of Massena and Louisville to the Saint Lawrence river road, running thence westerly and southwesterly on the Saint Lawrence river road to the village of Waddington, running thence westerly and southwesterly on the roads known as the Sucker Brook and Van Rensselaer roads to the end of the boulevard at the corporation line of the city of Ogdensburg.

Amended by L. 1910, ch. 648 and L. 1911, ch. 179.

Route 33. Commencing at Syracuse, running thence northerly to a point to be determined by the commission, on the dividing line between Oswego and Onondaga counties, running thence northerly by the way of Central Square to a point at or near Colosse on route number twenty-eight.

Route 34. Commencing at the city of Oswego on the east side of the river, running thence by the way of Fulton through Phoenix to a point to be determined by the commission on the dividing line between Onondaga and Oswego counties, running thence by the way of Liverpool to Syracuse.

Route 35. Commencing at a point to be determined by the commission on the dividing line between Nassau and Queens counties, running thence easterly through the northern portion of Nassau county to a point to be determined by the commission on the dividing line between Suffolk and Nassau counties, running thence easterly by the way of Jericho turnpike to Smithtown branch, Saint James, Port Jefferson and Wading River to Riverhead, running thence southerly to West Hampton, running thence westerly by the way of south country road to Patchogue, Sayville, Islip, Bay Shore and Babylon to Amityville, running thence westerly to a point to be determined by the commission on the dividing line between Nassau and Suffolk counties, running thence westerly through the southern portion of Nassau county to a point to be determined by the commission on the dividing line between Queens and Nassau counties.

Route 36. Commencing at Owego in Tioga county, running thence northerly to a point to be determined by the commission on the dividing line between Tompkins and Tioga counties, running thence northwesterly to the city of Ithaca, running thence northwesterly from the city of Ithaca to Trumansburg, at or near the dividing line between Suffolk and Aannau counties, running thence northwesterly and northerly by the way of Ovid to a point to be determined by the commission on route number six.

Route 37. Commencing at a point on route twenty-six at Dolgeville, running thence easterly along the old state road by way of Oppenheim, Lasellville, \*Garoga and Rockwood to the city of Johnstown in Fulton county, running thence easterly by way of West Perth to Perth Center, thence in a northerly direction to Broadalbin by way of Vail Mills, thence easterly through Vail Mills Corners to a point to be determined by the commission on the dividing line between Saratoga and Fulton counties.

\* So in original.

easterly through Whiteside Corners, Greens Corners, Mosherville, East Galway, Rock City Falls, and North Milton to Saratoga Springs, connecting there with route number twenty-five.

Amended by L. 1910, ch. 648 and L. 1912, ch. 475.

Route 37-a. Beginning at the village of Ballston Spa, on route twenty-five, running thence westerly along the town line road between the towns of Ballston and Milton, through Tibbetts Corners, Harmony Corners and Pettits Corners to Scotch church, and thence northerly through Galway village, connecting with route thirty-seven at General Carpentier mansion.

Route 37-b. Beginning at the hamlet of Malta, in the town of Malta, Saratoga county, and running thence westerly to East Line; thence northwesterly to Corps Corners; thence northerly through V Corners to the village of Ballston Spa.

Amended by L. 1912, ch. 542.

Route 38. Commencing at such point in or near the village of Schoharie, in the county of Schoharie, in the line of route number seven as the commission may determine; running thence southerly through the towns of Schoharie, Middleburg, Fulton, Blenheim, Gilboa and Conesville to, and intersecting route number five, at a point to be determined by the commission.

Added by L. 1909, ch. 504.

Route 38-a. Commencing at the village of Cobleskill, Schoharie county, upon State Route 7, and running thence northwesterly, or westerly and northerly, along a course to be determined by the Commission to Sharon Springs, connecting thereat with an improved stone road leading northerly from Sharon Springs.

Added by L. 1912, ch. 179.

Route 39. Commencing at a point on route twenty-five in the county of Saratoga at or near Ballston lake; thence southwesterly to a point to be determined by the commission on the dividing line between the counties of Saratoga and Schenectady; thence southwesterly to a point at or near the city of Schenectady connecting with route six.

Added by L. 1910, ch. 649.

**Amended by L. 1911, ch. 531.**

**Amended by L. 1911, ch. 662.**

**Added by L. 1911, ch. 395.**

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Pinewoods avenue to Eagle Mills connecting with Brunswick-Turnpike number two hundred and twenty-seven; thence to Quack-kill, Grafton and Petersburg, to a point on the state line of Massachusetts, to be determined by the commission.

Amended by L. 1911, ch. 614, and L. 1914, ch. 376.

Route 43. Beginning at Main street in the village of Mount Morris, running thence southwesterly along what is known as the state road to the village of Nunda, in Livingston county, thence along what is known as the Oakland-Portage road to Portage bridge and Letchworth park.

Added by L. 1911, ch. 166.

Route 43.\* Commencing at a point at or near the village of Stillwater in Saratoga county, running thence northerly and northwesterly through Bemis Heights and the Saratoga battlefield to Quaker Springs, running thence northerly and northeasterly through Victory Mills, thence to Schuylerville by way of Creamery Hill to Broad street; thence northerly to Spring street; and thence westerly until it connects with county highway number two hundred and forty-four.

Added by L. 1911, ch. 259.

Route 45. Commencing at a point on route twelve in the village of Watkins and running thence easterly and thence northerly on the east shore of Seneca lake through the hamlets of Hector and North Hector to a point on the dividing line of Schuyler and Seneca counties, thence northeasterly through the hamlet of Caywood to the village of Lodi and thence easterly to the village of Interlaken, connecting with route thirty-six.

Added by L. 1911, ch. 356 and amended by L. 1912, ch. 57.

Route 46. Commencing at a point on route number fourteen at or near Coopers Plains in Steuben county and running thence northerly to a point on the dividing line of Steuben and Schuyler counties; thence northeasterly through the village of Monterey and easterly by the valley road through the hamlet of Townsend; thence northeasterly following Old Folks picnic ground road to the village of Watkins, connecting with route number twelve;

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\* So in original.

thence southerly on route twelve to its intersection with route number forty-five; thence along said route forty-five to a point about one and one-half miles from the village of Burdett; thence northeasterly to the village of Burdett; thence easterly and northeasterly through Bennettsburg to Reynoldsville; thence southeasterly to Mecklenburg; thence northeasterly to Perry City; thence to a point on the dividing line between Schuyler and Tompkins counties; thence northeasterly to the village of Trumansburg, connecting with route number thirty-six.

Added by L. 1911, ch. 320.

§ 121. **Apportionment of mileage of state highways to be constructed or improved.** The mileage of state highways to be constructed or improved from the amount available from the sale of bonds issued as provided by chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven, and appropriated for the construction or improvement of state highways, shall be equitably apportioned by the commission among the several counties without discrimination; but not more than one-half of the amount appropriated each year from the proceeds of the sale of such bonds shall be expended under this article for the construction and improvement of state highways. In making the apportionment between counties the commission shall take into consideration the mileage which may be constructed from the amount to be expended under this article in each county for the construction or improvement of county highways, together with the mileage of state and county highways theretofore constructed out of moneys derived from the sale of bonds issued as above provided.

If moneys are not available for the improvement of any portion of a state route described in this article, the same may be improved as a county highway, provided the board of supervisors of the county within which such section is located designate it as a county highway as provided in this chapter, and proceed in all respects as provided herein for the improvement of county highways.

Amended by L. 1911, ch. 646 and L. 1917, ch. 315.

**Report of joint legislative committee on highways, 1908, contains the following statement in respect to this section:** "Article 7, sec. 12 of the Constitution, which authorizes the creation of a debt not exceeding fifty million

dollars for the improvement of highways provides that such highway shall be determined under general laws, which shall also provide for the equitable apportionment thereof among the counties. It is assumed in this section that the Commission in apportioning county highways among the counties will take into consideration those highways which are declared by this chapter to be State highways to be improved at the sole expense of the State. The evident purpose of the Constitution was to provide for an equitable apportionment of the highways among the counties whether they be constructed or improved by the State, or jointly by the State, county and town. An equitable apportionment of the highways to be constructed from the proceeds of the bonds issued under the constitutional provision must necessarily include both State and county highways. The Commission in exercising the authority conferred upon it by this section will be governed both by the statute and the Constitution."

§ 122. **Construction or improvement of county highways.** The county highways to be constructed or improved under this article at the joint expense of the state and county shall be those highways in each county determined by the commission to be of sufficient public importance to come within the purposes of this chapter so as to constitute a part of a properly developed system of improved market roads within the county, taking into account the use, location and value of such highways for the purposes of common traffic and travel. Such county highways shall be equitably apportioned by the commission among the several counties without discrimination. In making such apportionment the commission shall take into consideration the total mileage of state highways which shall be hereafter constructed or improved in each county, and also the highways therein which have been constructed or improved prior to the taking effect of this article from funds made available by the issue and sale of bonds as provided in section twelve of article seven of the constitution, so that there shall be an equitable distribution as between the counties of all highways built in whole or in part from such funds.

Amended by L. 1910, ch. 80.

§ 123. **Preliminary resolution of board of supervisors.** The board of supervisors of any county may pass a resolution stating that public interest demands the improvement of a highway or section thereof within the county, and requesting that it be constructed or improved as provided in this article. Such resolution shall contain a description of such highway or section thereof. Such highway or section thereof shall not include a portion of

a highway within a city, except that portion of the cities of Rome and Oneida lying outside of the respective corporation tax districts of said cities, nor any portion of a highway within an incorporated village, unless it be necessary to complete the connection of such highway with a highway already improved or to be improved under this article. The clerk of the board of supervisors shall, within ten days after the passage of such a resolution, transmit a certified copy thereof to the commission.

Amended by L. 1909, ch. 487.

§ 124. **Examination of county highway; approval or disapproval by commission.** The commission after receipt of such resolution, and at such times as it deems proper, shall examine the highway or section thereof sought to be constructed or improved, and shall determine whether it is of the character specified in section one hundred and twenty-two, and whether the construction or improvement thereof will provide for an equitable apportionment of the highways among the several counties as provided in such section. After such examination the commission shall certify its approval or disapproval of such resolution to the board of supervisors adopting it; if it disapprove thereof it shall certify its reasons therefor.

§ 125. **Maps, plans, specifications and estimates.** Whenever the commission shall have determined upon the construction or improvement of a state highway, or section thereof, or shall have approved a resolution adopted by a board of supervisors in any county requesting the construction or improvement of a county highway, or a section thereof, the commission shall direct the division engineer of the division wherein such highway or section thereof is situated to make surveys, and prepare suitable preliminary maps, plans and specifications. Such division engineer shall, subject to the direction and control of the commission, have the following powers and duties in respect to such highways:

1. He shall cause the highway or section thereof designated by the commission, or described in such resolution, to be mapped both in outline and profile.

2. He may provide for a deviation from the line of a highway already existing, if thereby a shorter or more direct highway, or a lessened gradient may be obtained without decreasing the usefulness of the highway.

3. He may provide for the widening of an existing highway.

4. He shall prepare preliminary plans and specifications for the construction or improvement of such highway or section thereof providing for a telford, macadam or gravel roadway, or other suitable construction, taking into consideration climate, soil and materials to be had in the vicinity thereof, and the extent and nature of the traffic likely to be upon such highway, specifying in his judgment the kind of highway a wise economy demands.

5. He shall provide in such plans and specifications for necessary culverts, drains, ditches, waterways, embankments, guard-rails and retaining walls.

6. He may provide therein for the removal or planting of trees, within the boundaries of the highway, when necessary for the preservation thereof.

6-a. He may provide therein for the removal of, or the trimming of any trees within the boundaries of the highway necessary for the convenience or safety of the public, or the construction or preservation of the highway.

7. He shall provide therein for the erection of suitable guide boards.

8. He may provide for such other work as may be required to complete the construction or improvement in a proper manner.

9. He shall cause an estimate to be made of the cost of the construction of such highway or section thereof in accordance with such plans and specifications. In making such estimate he shall ascertain with all practical accuracy the quantity of embankment, excavation and masonry, the quantity of all materials to be used and all items of work to be placed under contract and specify the estimated cost thereof.

Amended by L. 1911, ch. 646.

§ 125-a. **Construction or improvement of state or county highway.** Whenever the commission shall have determined upon the construction or improvement of a state or county highway, the plans and specifications of such state or county highway may provide, except in mountainous regions and where the physical conditions make it impracticable, either for one side shoulder or driveway of at least eight feet in width and constructed of a foundation of broken stone or gravel and a surface of dirt, cinders, gravel or other material affording safe footing for horses, or shoulders for driveways at least six feet in width of similar construction on either side of such improved state or county highway.

Whenever the commission shall have determined to resurface any improved state or county highway, except in mountainous regions and where the physical conditions make it impracticable, provisions may be made by such commission, with the approval of the board of supervisors, either for a driveway upon one side of the highway at least eight feet in width and constructed of a foundation of broken stone or gravel and a surface of dirt, cinders, gravel or other material affording safe footing for horses, or driveways of similar construction and at least six feet in width on either side of the road so resurfaced. The provisions of this section shall not apply to bridges on state or county highways.

Added by L. 1919, ch. 374.

§ 126. **Submission of maps, plans and specifications to district or county superintendent.** The commission shall cause the preliminary maps, plans and specifications for either a state or county highway, or a copy thereof, to be presented to the district or county superintendent of the district or county in which such highway or section thereof is situated, who shall personally examine the highway, or section thereof and the proposed maps, plans, and specifications, and shall recommend any modification thereof which in his judgment seems to be necessary and shall report thereon with \* fifteen days to the commission. He shall also take such other action in respect thereto as may be required by law or by the commission.

Amended by L. 1911, ch. 646.

§ 127. **Action of commission in respect to maps, plans, specifications and estimates.** Upon receiving the report of the district or county superintendent, as provided in the preceding section, the commission shall finally adopt the maps, plans, specifications and estimates which are to be used for the construction or improvement of the state or county highway to be constructed or improved. If such highway be a state highway the commission shall thereupon proceed to advertise and award contracts for the construction or improvement thereof as provided in section one hundred and thirty. If such highway be a county highway the commission shall transmit such plans, specifications and estimates as adopted by them to the board of supervisors of the county from which the resolution proceeded, together with

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\* So in original.

their certificate approving the construction or improvement of the highway or section thereof designated in such resolution.

§ 128. **Final resolution of board of supervisors.** The board of supervisors, after the receipt of plans, specifications and estimate of a county highway or section thereof, and after such modification thereof as may be made by a majority vote of such board, with the consent of the commission, may approve such plans, specifications and estimate, and adopt a resolution requesting that such county highway or section thereof be constructed or improved under the provisions of this article, in accordance therewith. In the case of a county highway or a section thereof which divides two or more counties, such resolution must be separately adopted by the board of supervisors of each county within which a portion of such highway lies. The form of such resolution shall be prescribed by the commission and shall contain the matter required by this article to be inserted therein. Immediately upon the adoption of such resolution the clerk of the board of supervisors shall transmit a certified copy thereof to the commission. When a board of supervisors has once adopted a resolution providing for the construction or improvement of a highway or a section thereof in accordance with such plans and specifications, no resolution thereafter adopted by such board shall rescind or annul such prior resolution either directly or indirectly, excepting under the advice and with the consent of the commission. Notwithstanding the adoption of such a resolution, the commission may modify such plans, specifications and estimate, prior to the award of a contract therefor and, upon the approval thereof by the board of supervisors as above provided, such highway or section thereof shall be constructed or improved in accordance with such plans, specifications and estimate.

Amended by L. 1909, ch. 240, § 45.

§ 129. **Order of construction of county highways.** Upon the receipt of such resolution the commission shall proceed with the improvement or construction of such county highway as provided in this article. The construction and improvement of such county highways and sections thereof shall be taken up and carried forward within a county in the consecutive order as determined by the date of the receipt by the commission in each case of the certified copy of the final resolution, so far as is practicable in the opinion of the commission. No such highway shall be placed upon

the list of highways to be constructed or improved nor receive a consecutive number on such list, unless such resolution shall appropriate and make immediately available for such construction or improvement the counties' share of the cost thereof.

Amended by L. 1910, ch. 247; L. 1911, ch. 646 and L. 1912, ch. 83.

**§ 130. Contracts for construction or improvement of highways.**

State and county highways shall be constructed or improved by contract. Upon the completion and final adoption or approval, as provided by law, of the plans, specifications and estimate for the construction or improvement of a state or county highway, contracts therefor shall be executed as provided herein.

1. *Advertising for proposals.* The commission shall advertise for proposals for the construction or improvement of such highways or sections thereof according to the plans, specifications and estimate prepared therefor. The advertisement shall be limited to a brief description of the work proposed to be done, with an announcement stating where the maps, plans, specifications and estimate may be seen, the terms and conditions under which proposals will be received, the time and place where the same will be opened, and such other matters as the commission may deem advisable to include therein. Such advertisement shall be published at least once in each week for two successive weeks in a newspaper published at the county seat of the county in which such highway or section thereof is to be constructed or improved, and in such other newspapers as the commission may designate. If no newspaper is published at such county seat, then the publication of the advertisement shall be in such newspaper or newspapers within the county as the commission may select. If no newspaper is published in the county, the publication of the advertisement shall be in such newspaper or newspapers in an adjoining county as may be selected by the commission.

Amended by L. 1917, ch. 261.

2. *Proposals.* Each proposal shall specify the gross sum for which the work will be performed and shall also include the amount to be charged for each item specified in the estimate. The commission may prescribe and furnish forms for the submission of such proposals and may prescribe the manner of submitting the same which shall not be inconsistent herewith. Accompanying each proposal there shall be a draft or certified check for three

per centum of the amount of the gross sum bid, which check, in case such proposal be accepted, shall be retained by the state commission of highways until the contract, and the bond hereinafter provided for, shall have been duly executed, whereupon such check shall be returned to the bidder. In case the bidder to whom the contract shall be awarded shall fail to execute such contract and bond, the moneys represented by such draft or certified check shall be regarded as liquidated damages and shall be forfeited to the state and shall be deposited by the commissioner with the state treasurer to the credit of the fund available for the construction of said highway; provided, however, that should the bidder request the commission to dispense with a bond as provided in subdivision seven of this section, such check shall be retained by the commission until fifteen per centum of the work under the contract has been accomplished, as determined according to the estimates from time to time approved by the commission as a basis for payments on the contract, and should the bidder to whom the contract shall be awarded fail to execute such contract or fail to progress the work embraced within such contract until such time as fifteen per centum of the work shall have been accomplished, the moneys represented by such draft or certified check shall be regarded as liquidated damages and shall be forfeited to the state and shall be deposited by the commissioner with the state treasurer to the credit of the fund available for the construction of said highway. The proposals when opened shall be subject at all reasonable times to public inspection, and at the time of opening shall be publicly read, and conspicuously posted in such a manner as to indicate the several items of the proposal.

Amended by L. 1919, ch. 623.

3. *Award of contracts.* The contract for the construction or improvement of such highway or section thereof shall be awarded to the lowest responsible bidder, except that no contract shall be awarded at a greater sum than that required for the work alone as shown in the estimate made for the construction or improvement of such highway or section thereof in accordance with such plans and specifications. The lowest bid shall be deemed to be that which specifically states the lowest gross sum for which the entire work will be performed, including all the items specified in the estimate therefor.

Amended by L. 1917, ch. 261.

4. *Estimates may be amended.* If no proposal otherwise acceptable is made within the estimate accompanying the plans and specifications, the commission may cause the estimate to be amended. If the highway to be constructed or improved is a county highway the commission shall certify the amended estimate to the board of supervisors and the board shall take action thereon as in a case where plans, specifications and estimates are originally submitted to a board of supervisors. Upon the amendment of such estimate, and its approval by the board of supervisors in case of a county highway, the commission may proceed anew to obtain proposals and award the contract as provided in this section.

5. *Rejection of proposals.* The commission may reject any or all proposals and may advertise for new proposals as above provided, if, in their opinion, the best interests of the state will thereby be promoted.

6. *Form of contract.* The commission shall prescribe the form of contract and may include therein such matters as they may deem advantageous to the state. Such forms shall be uniform so far as may be.

#### FINANCE LAW SECTION 51

§ 51. Workmen's compensation insurance on public works. Each contract to which the state, any public department or official thereof, or a commission appointed pursuant to law is a party and which is of such a character that the employees engaged thereon are required to be insured by the provisions of chapter forty-one of the laws of nineteen hundred and fourteen, known as the workmen's compensation law, and acts amendatory thereto, shall contain a stipulation that the same shall be void and of no effect unless the person or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of said contract, such employees, in compliance with the provisions of said law.

Added by L. 1916, ch. 478.

7. *Bond of contractor.* Unless a bond be dispensed with as hereinafter provided, each contractor, before entering into a contract for such construction or improvement, shall execute a bond in the form prescribed by the commission, with sufficient sureties, to be approved by the commission, conditioned that he will perform the work in accordance with the terms of the contract, and with the plans and specifications, and that he will commence and complete the work within the time prescribed in the contract; provided, however, that the commission shall, at the time of the execution of the contract, upon the written request of the con-

tractor, dispense with the giving of said bonds; but in any such case twenty per centum of the contract price shall be retained until the entire work has been completed and accepted. The bond, if given, shall also provide against any direct or indirect damages that shall be suffered or claimed on account of such construction or improvement during the time thereof, and until the highway is accepted.

Amended by L. 1919, ch. 623.

8. *Payments on contract.* The contract may provide for partial payments to an amount not exceeding ninety per centum, or in a case where the bond is dispensed with, eighty per centum, of the value of the work done, which shall be paid in the manner provided by this article, when certified to by the commission. Ten per centum of the contract price, where a bond approved by the commission is given and twenty per centum in case said bond is dispensed with, shall be retained until the entire work has been completed and accepted.

Amended by L. 1919, ch. 623.

9. *Contingencies.* All contingencies arising during the prosecution of the work shall be provided for to the satisfaction of the commission and as may be agreed upon in the original or by a supplemental contract executed by the commission; the amount to be expended shall not exceed the original estimate, unless such estimate shall have been duly amended by the commission and, in the case of a county highway, submitted to the board of supervisors for its approval. If a supplemental contract be executed by the commission for the performance of work or furnishing of material not provided for in the original contract, the amount to be charged thereunder for any such work or material shall not exceed the rate for which similar work or material was agreed to be performed or furnished under the original bid upon which the contract was awarded. Such supplemental contract shall not be binding unless it be approved by the commission in case of a state highway and in case of a county highway, by the chairman of the board of supervisors and the district or county superintendent.

§ 131. *Award of contracts to board of supervisors or town board.* A board of supervisors of a county, or a town board of a town, in which any portion of a state or county highway is situ-

ated, may present proposals and be awarded a contract for the construction or improvement of such highway, as provided in this article, for and on behalf of such county or town. If such contract be awarded to a board of supervisors or a town board such board shall, by resolution, designate some suitable person or persons to carry into effect, on behalf of such town, such contract, and transact all business in respect thereto as may be necessary. A member of the board of supervisors or town board at the time such contract was awarded or such designation was made; or a person who is a partner of, or a stockholder in the same corporation as that of such member, shall not be so designated. A member of the board of supervisors or town board at the time such designation was made, or a firm, corporation or association of which he is a member or has an interest, shall not be directly or indirectly interested in any such contract nor shall such member, or such firm, corporation or association furnish materials or perform labor or services, either directly or indirectly, under or in connection with the performance of any of the work required in accordance with such contract, nor shall such member, firm or corporation or association be paid for materials furnished or services rendered in respect to such contract. The clerk of the board of supervisors or the town clerk shall transmit a certified copy of the resolution designating the person or persons to carry into effect such contract to the commission prior to the awarding of a contract to the board of supervisors or town board. The person or persons so designated shall, before the contract is executed, give an undertaking to the county or town, with sureties to be approved by the commission and the board of supervisors or town board, for an amount equal to at least twenty-five per centum of the face of the contract. Such undertaking shall be conditioned on the faithful performance of their duties in respect to such contract and for the proper accounting, safe-keeping and lawful disbursement of all moneys that may come into their hands thereunder. Such undertaking shall be filed in the office of the county or town clerk and a copy thereof shall be transmitted to the commission. The person or persons so designated shall thereupon be competent to receive all moneys payable under such contract under the provision of this article, and they shall account therefor to the county or town. The board of supervisors or town board, after such contract is awarded, shall designate, by resolution, a banking corporation or a trust company wherein the moneys recei-

such contract shall be deposited. Such bank or trust company shall, upon the request of the board of supervisors or town board, make a statement of the money so deposited. The commission shall, by rules and regulations, prescribe the manner in which the moneys received under such contract shall be expended and the forms of accounts to be kept by the person or persons designated as above provided; and where convict labor is used, as hereinafter provided, an account shall be kept of the items incurred daily for maintenance of convicts and compensation of other laborers, if any. Reports may be required by the commission from time to time from such person or persons.

When a contract is entered into under the provisions of this section, the board undertaking thereby to construct or improve a highway or section thereof, may, by resolution, direct the person or persons designated for carrying out the contract to apply to the superintendent of state prisons for convict labor, in the construction of such highway or section thereof. The resolution shall specify the maximum number of convicts to be applied for, for such work. Such designated person or persons shall make request, in writing, to the superintendent of state prisons for convict labor, in conformity to the provisions of such resolution, such request to be accompanied with a copy of such resolution. A copy of such resolution and of such request shall also be filed with the commission. The superintendent may detail for labor, pursuant to such resolution and request, such number of convicts as may be available therefor, not exceeding the number applied for. Such convicts shall be in the immediate charge and custody of the officers and guards detailed by the superintendent of state prisons, and at all times subject to the control of such superintendent, except that the work to be done shall be directed by the engineers and foremen of the state highway department. The expense of maintenance of such convicts shall be paid by the county or town entering into such contract from funds due thereon, to such municipality. A county or town may purchase machinery and tools for the construction of a highway or section thereof, under any such contract, out of moneys to be paid thereon, within the estimates for such items contained in the proposals at the time of the letting of the contract, but such machinery and tools shall be the property of the state, and after the completion of the work shall be subject to disposal or to any lawful use by the commission. Moneys realized from selling or renting any such

used machinery or tools shall be paid into the state treasury to the credit of the highway fund. Any such used machinery or tools may be loaned by the commission, if requested, for construction of a highway or section thereof, by a county or town, by contract under this section, to be kept in repair and operated at the expense of the county or town with moneys payable under the contract.

If a county or town shall construct a highway or section thereof, by contract as above provided, for a lesser sum than the contract price, as the same shall appear from the accounts and reports herein provided for, the county or town, as the case may be, shall be paid only the amount of the actual cost of such construction, paid or incurred, and the surplus shall remain in the state treasury and continue available for any state or county highway construction for which the same may have been or shall be appropriated.

Amended by L. 1914, ch. 60, and L. 1918, ch. 328.

#### PRISON LAW.

§ 179. **Employment of convicts on public highways.** The superintendent of state prisons may employ or cause to be employed the convicts confined in the state prisons in the repair, maintenance, construction or improvement of the public highways at any place within the state, outside of an incorporated village or city, upon request or with the consent of the state commission of highways, in the case of state or county highways, or upon the request or with the consent of the officer having charge of such repairs, maintenance, construction or improvement, in the case of any other highway. When engaged in the maintenance and repair of a highway under the jurisdiction of county or town authorities, the county or town receiving the benefit of such labor shall pay such reasonable compensation as may be agreed upon, not exceeding one dollar per day for each prisoner. The local highway authorities of the county or town in which such labor is performed shall report to the superintendent of state prisons, or the agent and warden of the prison from which the convicts are employed, at the end of each week, the number of days' labor each convict has performed, and the prison department shall render a bill to the county or town covering such labor.

Upon the payment of such bill, the agent and warden of the prison rendering it shall immediately deposit the money received for such labor in a bank designated by the comptroller as the depository for the maintenance fund of such prison, to the credit of a separate fund to be called the "prison highway labor fund." A statement of such money so received and deposited shall immediately be sent by the agent and warden to the comptroller and the superintendent of state prisons, which statement shall show the date when such money was received, and shall be receipted by the proper officer of such

bank and verified by the oath of the agent and warden of such prison to the effect that the sum so deposited was all the money received since the date of the last deposit, from the labor of convicts on highways as provided by this section.

The money so received and deposited by such agent and warden shall be only available for the maintenance, housing, purchase of food, transportation and guarding of such convicts, and any other necessary expense while engaged in highway work, and shall be subject to the check of the agent and warden of such prison when countersigned by the comptroller in the payment of such accounts. The comptroller shall countersign such checks only when the same are drawn for the payment of vouchers properly chargeable to this fund and approved by the superintendent of state prisons.

On December thirty-first of each year the agent and warden of such prison shall draw his check in favor of the state treasurer for the balance remaining to the credit of the "prison highway labor fund" at that date and forward it to the comptroller, who shall countersign such check and deposit the same with the state treasurer to be added to the general fund.

The expense of maintenance of such convicts while employed in the improvement and repair of town highways under a special appropriation shall not exceed a rate fixed per diem per convict by the superintendent of state prisons at the beginning of the work, and shall be paid by the agent and warden of the prison concerned from the special appropriation made therefor. Any expense exceeding such fixed rate shall be paid by the agent and warden of the prison concerned from the regular prison maintenance appropriation for such prison.

The agent and warden of each prison may make such rules as he may deem necessary for the proper care, custody and control of such prisoners while so employed, subject to the approval of the superintendent of state prisons; but the work shall be performed according to the directions of the state commissioner of highways or of the local highway authorities in charge of such repairs, maintenance, construction or improvement.

A state, county or town highway herein referred to is a state, county or town highway as defined in the highway law.

The superintendent of state prisons is hereby authorized to purchase any machinery, tools and materials necessary in such employment, except employment on a state or county highway.

Amended by L. 1914, ch. 60; L. 1917, ch. 318, and L. 1919, ch. 420.

§ 132. Responsibility of commissioner of highways for the performance of contracts for construction or improvement of state and county highways; suspension of work under contract; completion by commissioner of highways. The performance of every contract for the construction or improvement of a state or county highway shall be under the supervision and control of the commissioner of highways, and it shall be his duty to see that every such contract is performed in accordance with the provisions of the contract and with the plans and specifications forming a part

thereof. For such purpose, the commissioner of highways, shall have the direction and control of the deputies, secretary, division engineers, officers, clerks and employees of the commission. If the commissioner of highways shall determine that the work upon any contract for the construction or improvement, maintenance, repair or reconstruction, of a state or county highway, is not being performed according to the contract or for the best interests of the state, the execution of the work by the contractor may be temporarily suspended by the commissioner of highways, who may then proceed with the work under his own direction in such manner as will accord with the contract specifications and be for the best interests of the state; or he may cancel the contract and either readvertise and relet as provided in section one hundred and thirty, or complete the work under his own direction in such manner as will accord with the contract specifications and be for the best interests of the state. Any excess in the cost of completing the contract beyond the price for which it was originally awarded shall be charged to and paid by the contractor failing to perform the work. Every contract for the construction or improvement, maintenance, repair or reconstruction of a state or county highway shall reserve to the commission the right to suspend or cancel the contract as above provided, and to complete the work thereunder or readvertise and relet as the commission may determine.

In the case of a contract for the construction or improvement, other than maintenance, repair or reconstruction, of a state or county highway executed under the provisions of this chapter prior to January first, nineteen hundred and eighteen, the state commissioner of highways shall, upon the written request of the contractor and the surety company on the bond accompanying such contract, suspend or defer operations on any portion or portions of such contract on which no work has been performed except the installation of culverts and proper backfill, or the installation of curbs or other structures which do not interfere with such portion of the highway for traffic purposes, and he may also upon like request suspend or defer operations on any portion or portions which have been partially completed, where it is shown to the satisfaction of the commissioner of highways that work cannot proceed on such portion or portions either because there is no market supply of certain necessary materials or because lack of transportation facilities renders it impossible to obtain

such materials; provided that the contractor before the suspension of such work shall place such partially completed portion or portions in a suitable condition for traffic and shall agree that the state department of highways may, during the period of suspension, maintain such portion or portions in a proper condition for traffic, the expense thereof to be paid from moneys appropriated for such contract and to be a charge against the contractor and to be deducted from any moneys which may be due or hereafter become due the contractor under such contract.

It is further provided that such contractor and surety company shall, in connection with any such suspension, enter into a written agreement with the commissioner, whereby it shall be stipulated and agreed that the acceptance of, and full payment for, all of the work performed within the completion points designated, as hereinafter provided, by the commissioner, shall in no way change or alter the terms of the contract or the obligations of the contractor or of the surety company on the bond accompanying said contract with regard to proceeding to the completion of the remainder of the contract; except that upon the acceptance in the manner herein provided of the completed portion of any contract, the amount of the bond accompanying such contract shall, from the date of such acceptance of such completed portion, be reduced to such an amount as will equal fifty per centum of the value of the work remaining to be performed under such contract, such value to be determined by applying to the quantities of work to be performed the item prices therefor contained in the contract. Such work of completion, however, shall not, except by mutual consent of the parties to the agreement, begin upon a date earlier than March first, nineteen hundred and nineteen, unless the war in which the United States is now engaged shall have terminated prior thereto by the signing of peace terms, and in that event not earlier than the date of such signing. In case the war shall not have terminated by the signing of such terms of peace on or before March first, nineteen hundred and nineteen, then the commissioner may extend the commencement of the completion of such contract to March first, nineteen hundred and twenty, but no longer. Should peace terms be signed during the period of suspension as above authorized, such suspension may thereupon be terminated by the commissioner by the service of a written notice upon the contractor and his surety company directing the resumption of work within sixty days after such service.

The commissioner of highways is hereby authorized and empowered to enter into such an agreement and to accept as finally completed, and to order full payment for, all work embraced in such contract within such points as shall be designated by the commissioner for such acceptance, if within such points all work provided by the contract is fully performed, notwithstanding the provision for the retention of ten per centum of the contract price required under section one hundred and thirty, subdivision eight of this chapter.

All of the provisions of this section relating to the suspension of contracts upon the joint request of the contractor and the surety company, shall apply in like manner upon the written request of the surety company only, with regard to a contract which shall hereafter be abrogated or cancelled upon failure of the contractor to perform, except the provision relating to the payment of the retained percentage, which percentage shall be retained until the final completion of the entire contract.

In the case of such a suspension of operations under a contract in which there is provision for the maintenance of the road by the contractor for a period of three years from the final completion and acceptance of the entire contract with a bond executed by a surety company guaranteeing such maintenance, the operation of such guarantee clause shall commence immediately upon the acceptance of the completed portion or portions of the road and shall be in full force and operation over such portion or portions for the specified period of three years from the date of such acceptance. The provisions of article seven of this chapter, relative to maintenance and repair, shall apply to such portion or portions of any contract as may be completed and accepted as hereinbefore provided in this section.

The provisions of sections one hundred and thirty-three and one hundred and thirty-four of this chapter, relative to the final acceptance of fully completed contracts, shall apply with respect to the acceptance of portions of contracts under this section.

The town superintendent of a town within which is located the portion of a highway which is included in such a partially completed contract, but upon which portion no work has been performed by the contractor except the installation of culverts with proper backfill and the completion of which has been suspended, deferred or extended as hereinbefore provided in this section, is hereby authorized, empowered and directed to keep and

maintain the same in a good and passable condition in the same manner as other town highways are kept and maintained; such portion of highway being deemed during the period of such suspension a town highway for the purposes of maintenance and upkeep, the jurisdiction and authority of the town superintendent over such highway to cease when work is resumed by the contractor upon such portion, provided, however, that the work to be performed by the town superintendent shall be of a surface nature only.

Amended by L. 1911, ch. 646, and L. 1913, ch. 517, and L. 1918, ch. 413.

§ 133. **Acceptance of state highway when completed.** Upon the completion of a state highway or section thereof constructed or improved under a contract let as provided in this article, the division engineer shall inspect the same and if it be completed as provided in the contract, he shall thereupon so report to the commission, which shall, if it approve, notify the county or district superintendent of the county in which the road is located, in writing, that it will accept the work within twenty days from the date of such notice, unless protest in writing be filed by such county or district superintendent. In case a protest is filed the commission shall hear the same and if it is sustained then it shall delay the acceptance of the highway or section thereof until the same is properly completed. In case no protest is filed the highway or section thereof shall at the expiration of said twenty days be deemed finally completed and accepted and shall thereafter be maintained as provided in this chapter.

Amended by L. 1911, ch. 646, and L. 1915, ch. 548.

§ 134. **Acceptance of county highway.** Upon the completion of a county highway or section thereof, constructed or improved under a contract let as provided in this article, the division engineer shall inspect the same and if it be completed as provided in the contract he shall thereupon so report to the commission, which shall, if it approve, notify, in writing, the county or district superintendent and the board of supervisors of the county in which such highway or section thereof is located that it will accept the highway within twenty days from the date of such notice unless protest in writing be filed with the commission by such district or county superintendent or by the board of supervisors. In case a protest is filed, the commission shall hear the same, and if it

is sustained, the commission shall delay the acceptance of the highway or section thereof until it be properly completed. In case no protest is filed, the highway or section thereof shall at the expiration of the said twenty days be deemed finally completed and accepted on behalf of the county and the state, and shall thereafter be maintained as provided in this chapter.

Amended by L. 1911, ch. 646 and L. 1916, ch. 460.

**§ 135. Entry upon adjacent lands for drainage purposes.** Lands adjacent to a state or county highway may be entered upon and occupied for the purpose of opening or constructing a drain or ditch so as to properly drain such highway:

1. By a contractor, or any of his agents or employees, when directed by the commission, during the construction or improvement of such highway.

2. By the commission or its duly authorized officers, agents or employees, at any time, for the purpose of making surveys for such drain or ditch.

3. By the commission, or its duly authorized officers, agents or employees, or by a county, district or town superintendent, when directed by the commission, after the completion and acceptance of the highway for the purpose of opening, constructing or maintaining ditches or drains upon such lands, necessary for the proper maintenance of such highway.

**§ 136. Damages for entry.** The commission may agree with the owner of lands entered upon and occupied as provided in the preceding section for the payment of damages caused by such entry, or if unable to so agree the right to enter and occupy such lands may be acquired and the damages therefor shall be ascertained as provided in the condemnation law. Such damages shall, in the case of a state highway, be paid out of moneys available for the construction or improvement of such highway, and in the case of a county highway shall be a county charge and paid in the same manner as other county charges.

**§ 137. State and county highways in villages.** A state or county highway may be constructed through a village, unless the street through which it runs has, in the opinion of the commission, been so improved or paved as to form a continuous and improved highway of sufficient permanence as not to warrant its reconstruction, in which case such highway shall be constructed or improved to

the place where such paved or improved street begins. A state or county highway within a village shall be of the same width and type of construction as the highway outside of the village which connects with the highway within the village, unless a greater width or different type of construction is desired by the municipality, in which case the board of trustees of such village shall by resolution petition the commission to provide the width and type of construction desired. The additional expense caused by the increased width or different type of construction or both shall be borne wholly by the village. The commission shall, in its discretion, upon receipt of such petition, if filed prior to the advertisement for bids, provide for the width and type of construction described in such petition. Whenever the commission shall have approved such a village petition the plans, specifications and estimates of cost, together with an estimate showing the additional cost to be borne by the village, to provide for the greater width or different type of construction or both, shall be submitted to the board of trustees who, if it approve such plans, specifications and estimate of cost, shall by resolution appropriate the funds necessary to provide for the portion of the cost of construction to be borne by the village. Such fund shall, prior to the award of the contract, be deposited by the village with the state comptroller subject to the draft or requisition of the state commission of highways, and a certified copy of the resolution shall be filed with the commission. The moneys so required shall be raised by tax or from the issue and sale of bonds as provided in the village law. Upon the completion of a highway within a village where a portion of the cost is borne by the village the commission shall transmit to the board of trustees a statement showing the actual costs of the additional width or changed construction including a proportionate charge for engineering, and shall notify the village clerk that it will accept the work within twenty days from the date of such notice, unless protest in writing against the acceptance shall be filed by such clerk with the commission. In case a protest is filed the commission shall hear the same and if it is sustained the commission shall delay the acceptance of the highway or section thereof until the same be properly completed. If no protest is filed the highway or section thereof shall at the expiration of the said twenty days be deemed finally completed and accepted on behalf of the village and the state, and shall thereafter be maintained in the manner provided in this chapter for the maintenance and

repair of state and county highways. The provisions of the village law, special village charters and other general or special laws relative to the pavement or improvement of streets and the assessment and payment of the cost thereof shall apply, as far as may be, to such additional construction and the assessment and payment of the cost thereof, except that the provisions of any general or local act affecting the pavement or improvement of streets or avenues in any village and requiring the owners, or any of the owners, of the frontage on a street to consent to the improvement or pavement thereof, or requiring a hearing to be given to the persons who, or whose premises, are subject to assessment, upon the question of doing such paving or making such improvement shall not apply to the portion of the improvement or pavement of a state or county highway the expense for which is required to be paid by the village to the state.

The provisions of this act shall not prevent the improvement by state aid under the statute as it existed prior to the passage of this act, of streets in cities of the second and third class, where, prior to the passage of this act, highway numbers had been assigned as provided by article six of this act; nor shall the provisions of this act prevent the improvement in such cities of streets heretofore petitioned for and approved, in cases where the proposed improvement of each street does not exceed one and one-half miles in length; but the total mileage of all such streets not exceeding one and one-half miles in length, shall not in the aggregate exceed four miles.

Wherever plans for such improvement in a city of the second class have been approved and a highway number assigned, and the work is ready for contract as hereinbefore described and the common council of such city has appropriated and made available the city's share of the cost of such improvement, the city treasurer of such city is hereby authorized and empowered to borrow a sufficient amount in anticipation of the collection thereof, and to pledge the faith and credit of the city for the payment of such amount when due, with interest, and is further authorized, empowered and directed to deposit such moneys with the state comptroller in the same manner as is provided by this section with regard to the improvement of village streets.

Amended by L. 1910, ch. 233; L. 1911, ch. 88; L. 1912, ch. 88; L. 1913, ch. 131; L. 1913, ch. 319 and L. 1916, ch. 571.

§ 137-a State and county highways in certain cities of the second and third class. A state or county highway may be constructed through a city of the second or third class situated in a county containing over three hundred thousand inhabitants if at least two cities in such county adjoin a city of the first class containing over two million inhabitants, unless the street through which it runs has, in the opinion of the commission, been so improved or paved as to form a continuous and improved highway of sufficient permanence as not to warrant its reconstruction, in which case, if the commission approve, such highway shall be constructed or improved to the place where such paved or improved street begins, but not more than fifty per centum of money appropriated by the state, and now or hereafter available for the construction of state or county highways in such county, shall be applied to the construction of a state or county highway through a city of the second or third class in such county. A state or county highway within such a city shall be of the same width and type of construction as the highway outside of such city which connects with the highway within such city, unless a greater width or different type of construction is desired by the municipality, in which case the board of aldermen or common council of such city shall by resolution petition the commission to provide the width and type of construction desired. The additional expense caused by the increased width or different type of construction or both shall be borne wholly by such city. The commission shall in its discretion upon receipt of such petition, if filed prior to the advertisement for bids, provide for the width and type of construction described in such petition. Whenever the commission shall have approved such a city petition the plans, specifications and estimates of cost, together with an estimate showing the additional cost to be borne by such city to provide for the greater width or different type of construction or both shall be submitted to the board of aldermen or common council who, if it approve such plans, specifications and estimate of cost, shall by resolution appropriate the funds necessary to provide for the portion of the cost of construction to be borne by such city. Such fund shall prior to the award of the contract be deposited by such city with the state comptroller subject to the draft or requisition of the state commission of highways, and a certified copy of the resolution shall be filed with the commission. The moneys so required shall be raised by tax from the issue and sale of bonds

as provided by the general or special act governing bond issues and taxation in any such city. Upon the completion of such state or county highway within such city of the second or third class, where a portion of the cost is borne by such city, the commission shall transmit to the board of aldermen or common council a statement showing the actual cost of the additional width or changed construction including a proportionate charge for engineering, and shall notify the city clerk that it will accept the work within twenty days from the date of such notice unless protest in writing against the acceptance shall be filed by such clerk with the commission. In case a protest is filed the commission shall hear the same and if it is sustained the commission shall delay the acceptance of the highway or section thereof until the same be properly completed. If no protest is filed the highway or section thereof shall at the expiration of said twenty days be deemed finally completed and accepted on behalf of such city and the state. The provisions of the general city law, special city charters and other general or special laws relative to the pavement or improvement of streets and the assessment and payment of the cost thereof shall apply as far as may be to such additional construction and the assessment and payment of the cost thereof, except that the provisions of any general or local act affecting the pavement or improvement of streets or avenues in any such city and requiring the owners or any of the owners of the frontage on a street to consent to the improvement or pavement thereof, or requiring a hearing to be given to the persons who or whose premises are subject to assessment upon the question of doing such paving or making such improvement shall not apply to the portion of the improvement or pavement of a state or county highway the expense for which is required to be paid by such city to the state. Such street so improved shall thereafter be maintained at the expense of the municipality within which such street or part thereof is situated.

Added by L. 1918, ch. 386.

§ 138. **Connecting highways in villages.** The board of trustees of a village may, by resolution, petition the commission for the construction or improvement of a highway to connect streets or highways within the village which have been paved or improved with county highways which have been heretofore built under the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory

thereof. If in the judgment of the commission public convenience requires the construction or improvement of such connecting highways, the commission shall cause plans, specifications and estimates to be prepared, and shall cause the same to be transmitted to the board of supervisors of the county wherein such highway is situated. The board of supervisors shall thereupon adopt a resolution providing for such construction or improvement as provided in this article. The payment of the cost of such construction or improvement shall be provided for in such resolution and such payment shall be made in the same manner as provided for other county highways. A certified copy of such resolution shall be filed in the office of the commission. The construction or improvement of such connecting highway shall then be taken up in the order and manner provided in this article for the construction or improvement of county highways. If it is desired to construct or improve any portion of such a connecting highway at a width greater than that provided for in the plans and specifications therefor, or if a modification of such plans and specifications is desired by which the cost thereof will be increased, the board of trustees of the village shall proceed as in the preceding section to secure such a modification of the plans and specifications as will provide for such desired construction. The provisions of the preceding section shall apply in like manner to the connecting highway to be constructed or improved as provided in this section.

The provisions of this act shall not prevent the improvement by state aid under the statute as it existed prior to the passage of this act, of streets in cities of the second and third class, where, prior to the passage of this act, highway numbers had been assigned as provided by article six of this act; nor shall the provisions of this act prevent the improvement in such cities of streets heretofore petitioned for and approved in cases where the proposed improvement of each street does not exceed one and one-half miles in length; but the total mileage of all such streets not exceeding one and one-half miles in length shall not in the aggregate exceed four miles.

Whenever plans for such improvement in a city of the second class have been approved and a highway number assigned, and the work is ready for contract as hereinbefore described and the common council of such city has appropriated and made available the city's share of the cost of such improvement, the city treasurer

of such city is hereby authorized and empowered to borrow a sufficient amount in anticipation of the collection thereof, and to pledge the faith and credit of the city for the payment of such amount when due, with interest, and is further authorized, empowered and directed to deposit such moneys with the state comptroller in the same manner as is provided by this section with regard to the improvement of village streets.

Amended by L. 1911, ch. 88; L. 1912, ch. 88 and L. 1916, ch. 570.

§ 138-a. **State and county highways of additional width and increased cost at expense of town.** Whenever the commission shall have determined upon the construction or improvement of a state or county highway or section thereof and it is desired by any town in which such proposed highway is situated to construct or improve the same at a greater width or in a manner involving greater cost, or both, than that provided in the plans and specifications as prepared by the commission, the town board may petition the commission for an estimate of the additional cost of constructing or improving the same to a width or in a manner, or both, as desired by such board. The commission shall as soon as practicable make an estimate of such additional cost and transmit the same to the town board, and the town board may thereupon by resolution petition the commission to provide the width and type of construction desired. The additional expense caused by the increased width or different type of construction, or both, shall be borne wholly by the town. The commission shall, in its discretion, upon receipt of such resolution, if filed prior to the advertisement for bids, provide for the width and type of construction described in such resolution. Whenever the commission shall have approved such a resolution the plans, specifications and estimate of cost shall be submitted to the town board, who, if it approve such plans, specifications and estimate of cost shall, by resolution, duly adopted by a vote of a majority of all the members of such board, appropriate the funds necessary to provide for the portion of the cost of construction to be borne by the town. Such funds shall, prior to the award of the contract, be deposited by the town with the state comptroller, subject to the draft or requisition of the state commission of highways, and a certified copy of the resolution shall be filed with the commission. If the town board adopts a proposition to raise such funds by the issue and sale of town bonds the bonds may be issued and sold in the manner prescribed

in section one hundred and forty-two of this chapter. Upon the completion of the highway within a town where a portion of the cost is borne by the town the commission shall transmit to the town board a statement showing the actual cost of the additional width or changed construction including a proportionate charge for engineering and shall notify the town clerk that it will accept the work within twenty days from the date of such notice unless protest in writing against the acceptance shall be filed by such clerk with the commission. In case a protest is filed the commission shall hear the same and if it is sustained the commission shall delay the acceptance of the highway or section thereof until the same be properly completed. If no protest is filed the highway or section thereof shall at the expiration of the said twenty days be deemed finally completed and accepted on behalf of the town and the state and shall thereafter be maintained in the manner provided in this chapter for maintenance and repair of state and county highways.

Added by L. 1911, ch. 375 and amended by L. 1916, ch. 461.

**§ 139. Resolution to provide for raising money.** The resolution of the board of supervisors providing for the construction or improvement of a county highway or section thereof shall appropriate and make immediately available to the requisition of the commission an amount sufficient to pay the share of the cost of such construction or improvement which is to be borne by the county within which such highway or section thereof is located.

Amended by L. 1910, ch. 247 and L. 1912, ch. 83.

**§ 140. Modifying method of payment.** If a resolution has been heretofore adopted by a board of supervisors requesting the state to pay the entire cost of the construction or improvement of a county highway in the first instance and that the state charge the county and town or towns annually with their share of the interest and sinking fund, as provided in chapter four hundred and sixty-nine of the laws of nineteen hundred and six, and the acts amendatory thereof, such board of supervisors may adopt a resolution rescinding such prior resolution and appropriating and making immediately available an amount sufficient to pay the share of the cost of the construction or improvement of such highway. The clerk of the board of supervisors shall transmit certified copies of such resolution to the commission and the state comptroller. If such prior resolution shall not be so rescinded it shall

have the same force and effect which it had prior to the amendment of this section. The adoption of a resolution modifying the method of payment of the share of the county and town or towns shall not affect or change the date of the filing of the original resolution providing for the construction or improvement of such highway nor alter in any way the order of construction determined by the date of the filing of the original resolution.

Whenever a board of supervisors has in the past by resolution requested, and the state has paid, the entire cost of the construction or improvement of a county highway, the board of supervisors of a county wherein any such highway is located may, by resolution, provide for the payment of such share of the cost so advanced by the state towards the construction of such county highway, and said board of supervisors is hereby authorized to appropriate and make immediately available an amount sufficient to pay to the state the share due to the state on account of the construction and improvement of such highways. If any board of supervisors shall pass such resolution providing for the payment to the state of the moneys so advanced the said board of supervisors shall have the power and authority to borrow the moneys necessary to make such payment, and in case there is due to the county any sum of money from the town in which said county highway is located, the said town is also authorized to borrow and appropriate its share of the cost of such county highway to the county treasurer of the county in which said highway is located.

All moneys paid to the state pursuant to the provisions of this section, shall be deposited by the comptroller with the state treasurer to the credit of the highway improvement fund, from which fund the said moneys so advanced to said counties were originally taken, and may be used by the state commission of highways in the construction of state and county highways in any county or counties designated by the state commission of highways.

Amended by L. 1910, ch. 247 and L. 1915, ch. 400.

**§ 141. Division of cost of county highways; payments by county treasurer.** Whenever the construction or improvement of a county highway or section thereof under a contract shall be completed and the final payment therefor shall have been made the commission shall prepare a statement of the cost of such construction or improvement, including engineering expenses, inspection and all

charges and expenses properly chargeable thereto, showing in detail the date of each payment, and the purpose and amount of such payment. Such payments shall be grouped as far as practicable by dates and the total thus obtained shall be deemed the cost of such construction or improvement, and a certified copy of said statement shall be filed by the commission in the office of the comptroller. If a county highway or section thereof so constructed or improved shall be situate in two or more counties, the commission shall apportion such expense to such counties according to the cost of such construction or improvement in each of such counties. Such statement when audited and approved by the comptroller shall be filed in his office and shall be final, and a duplicate thereof shall be filed with the county treasurer of each county wherein the highway or section thereof has been improved. If the board of supervisors of any county shall have heretofore provided funds to pay two per centum of the cost of such county highway as thus determined, for each one thousand dollars of assessed valuation of real and personal property liable to taxation in said county for each mile of public highway within such county to be ascertained and determined by dividing the total assessed valuation of taxable property in said county as equalized for state purposes by the total mileage of highways in said county, exclusive of the streets and highways within any incorporated city or village in said county, but not exceeding thirty-five per centum of the cost for the county as shown by such statement, it shall be the duty of the county treasurer to pay the amount thereof upon the requisition of the commission and thereafter the county shall be deemed to be fully discharged of its obligation to the state on account of the construction or improvement of such county highway, except the obligation to pay their proportionate amount of the state tax for the state's share of the cost of construction. At least ten days' notice shall be given by the commission to the county treasurer prior to the making of such a requisition. A copy of each contract providing for the construction or improvement of a county highway, and the plans and specifications therefor, together with copies of certificates showing the progress of the work, upon which requisitions are drawn, shall be filed with the county treasurer. The mileage of highways to be used in determining the amounts to be charged to a county under this section shall be the tables of mileage formerly prepared by the state engineer until the tables as provided in this chapter are filed.

Amended by L. 1912, ch. 83.

§ 141-a. **Alternative method of apportioning the expense of county highways.** The board of supervisors of any county may in its discretion provide by resolution that fifty per centum of the cost of construction or improvement of any county highway within the county shall be borne by the county. The portion of the cost to be borne by the county shall be appropriated and made immediately available to the requisition or draft of the state commission of highways at the time of the final resolution by the board of supervisors approving the plans and estimate of cost submitted by the state commissioner of highways as provided by section one hundred and twenty-eight of this act. If, in any county, a town shall have heretofore paid or become liable to pay fifteen per centum or less of the cost of construction or improvement of any such county highway pursuant to the former provisions of this section, the amount so paid or to be paid may be repaid by the county to such town, and a tax may be levied by the board of supervisors on the taxable property in the county at large sufficient to provide moneys for such repayment so far as other county moneys are not available therefor.

In the case of a county highway where the plans have heretofore been approved by the board of supervisors of a county, and the distribution of cost for such highway has been made as provided by section one hundred and forty-one of this act, and the county has heretofore appropriated and made available its share of the cost of the construction or improvement of such highway based upon an apportionment other than that provided by this section, but the final payment has not been made by the county, the board of supervisors may in accordance with the provisions of section one hundred and twenty-eight of this act rescind the resolution previously adopted appropriating its share of the cost, and in such case, shall adopt a resolution appropriating such an amount as will equal fifty per centum of the total estimated cost of such highway as shown in an estimate to be provided by the state commissioner of highways, making such amount so appropriated immediately available to the draft or requisition of the commission for the construction or improvement of such highway.

If there be not sufficient funds in the county treasury to pay the share of the county, the county treasurer is hereby authorized and empowered to borrow, in anticipation of taxes to be collected therefor or of the issuance of bonds as hereby provided, such an amount as may be necessary, and is hereby authorized to pledge the faith and credit of the county for the payment, with interest, of the moneys so borrowed.

The board of supervisors of the county may by resolution authorize the issuance of county highway bonds, in amounts to be determined by such board, the proceeds of which shall be applied to the payment of the share of the cost of construction or improvement of such highway to be borne by the county as hereinbefore provided. Such bonds shall be payable not more than thirty years from their date.

The board of supervisors shall provide for the assessment, levy, and collection by tax of the moneys required to meet the obligation of the county for its share of the cost of such improved highway; and the moneys so raised shall be paid into the county treasury and shall become available for the draft or requisition of the state commission of highways, or for the payment of moneys borrowed by the county treasurer as hereinbefore provided together with interest thereon, or for the payment of bonds and the interest thereon issued as hereinbefore provided, or any part thereof.

Added by L. 1916, ch. 179, and amended by L. 1917, ch. 550.

**§ 142. County or town may borrow money.** Whenever the board of supervisors shall have, by resolution, appropriated and made immediately available to the requisition of the commission an amount sufficient to pay its share of the cost of such construction or improvement which is to be borne by the county within which such highway or section thereof is located, such amount so appropriated shall be a county charge and shall be paid by the county treasurer of the county in which such highway or section thereof is located, upon the requisition of the commission. If there is not sufficient funds in the county treasury to pay such share of the county of the cost of construction of such improvement so appropriated and made available, the county treasurer is authorized to borrow a sufficient amount to pay such share in anticipation of taxes to be collected therefor, or the issuance of bonds as hereinafter provided, and to pledge the faith and credit of the county for the payment of the amount when due, with interest. The board of supervisors may, by resolution, authorize the issuance and sale of bonds of the county to an amount not exceeding the share of the county as apportioned by the commission, or if such apportionment has not been made, to an amount not exceeding thirty-five per centum of the estimated cost of the construction or improvement of such county highway as shown by the

estimate approved by the board of supervisors pursuant to section one hundred and twenty-eight of this chapter, and apply the proceeds of such bonds to the payment of the share of the cost of construction of such highway to be borne by the county, appropriated and made immediately available as aforesaid or to the payment and redemption of any certificates of indebtedness issued as above provided. Said bonds shall be payable not more than thirty years from their date. The board of supervisors shall provide for the assessment, levy and collection by tax of all or any part of the share of the cost of such improvement apportioned to the county which has not been provided for by the issuance of county bonds as a county charge. Upon the petition of the town board of any town, the board of supervisors of the county may, by resolution, authorize the town to borrow a sufficient sum to pay the share of the cost of the construction or improvement of a county highway, which is to be borne by the town as apportioned by the commission and to issue and sell town bonds therefor. Such bonds shall be payable not more than thirty years from their date, to be sold by the supervisor for not less than par, and the proceeds thereof shall be paid into the county treasury to be applied in payment of the share of such cost which is to be borne by such town and the redemption of any bonds or certificates of indebtedness issued by the county to pay such share. The board of supervisors shall, from time to time, impose upon the taxable property of the town a tax sufficient to pay the principal and interest of such bonds as the same shall become due. The board of supervisors shall provide for the assessment, levy and collection by tax of all or any part of the share or shares of the town or towns which has not been provided for by the issuance of town bonds as a town charge.

Amended by L. 1909, ch. 486; L. 1910, ch. 580 and L. 1913, ch. 623.

§ 142-a. Where a street surface railroad shall be laid in any street, highway or public place in any town, village, or in any city of the second or third classes, which it was heretofore or shall hereafter be determined to pave, improve, reconstruct or repair, as provided in this chapter, the proposals and contract for such improvement, reconstruction or repair shall include the improvement, reconstruction or repair of the space between the tracks of such street surface railroad, the rails of such tracks and two feet in width outside of such tracks, and the work of improvement, reconstruction or repair in such space shall be done at

the same time and under the same supervision as the work of improvement, reconstruction or repair of the remainder of such street, highway or public place. The commission may prescribe the materials to be used in paving, improving, reconstructing or repairing such street, highway or public place within the railroad space above described, and upon the proper completion of the work, the commission shall certify to the board of trustees of such village, or the common council of cities of the second or third classes, as the case may be, the cost of the pavement, improvement, reconstruction or repair of such street, highway or public place within such railroad space, and the entire expense of the pavement, reconstruction or repair within such railroad space whether heretofore or hereafter made or ordered, shall be assessed and levied upon the property of the company owning or operating such railroad, and shall be collected in the same manner as other expenses for local improvements are assessed, levied and collected in such town, village or city; and an action may also be maintained by the municipality against the company in any court of record for the collection of such expense and assessment. This section shall not apply to such pavement, reconstruction or repairs in villages in counties adjoining cities of the first class.

Added by L. 1913, ch. 177 and amended by L. 1916, ch. 578.

**§ 143. Apportionment and payment of expense of constructing county highway through or into cities of the second and third classes.** If a county highway be constructed, under the provisions of this chapter, through or within a city of the second or third class, the board of supervisors of the county in which the city is situated shall, by resolution, apportion the cost thereof between the county and city as follows: Fifteen per centum of the portion of such highway within a city shall be borne by the city and thirty-five per centum thereof by the county. The share to be borne by the county shall be paid or provided for in the manner required by this chapter in the case of an apportionment of such cost between the county and a town. The share to be borne by the city shall be paid by the imposition of a tax therein for the full amount thereof or, in case of a city of the second class, if the common council and the board of estimate and apportionment shall so determine, then by the issuance and sale of city bonds as provided in the second class cities law, and in the case of

a city of the third class, if the common council or board of aldermen thereof so determine, then by the issuance and sale of city bonds, to be payable in not more than thirty years from their date, bearing interest at not to exceed the legal rate, and to be sold for not less than par; or such common council or board of aldermen may cause a portion of the city's share to be raised by tax at the time of the next ensuing annual city tax levy and the balance to be raised by the issuance and sale of bonds as herein above provided.

Amended by L. 1912, ch. 88.

§ 144. **Payment of cost of state highway.** The entire expense of the construction or improvement of a state highway shall be paid by the state treasurer upon the warrant of the comptroller issued upon the requisition of the commission out of any specific appropriation made available for the construction or improvement of state highways.

§ 145. **Abolition of railroad grade crossings.** The commission shall provide for and cause the abolition of railroad grade crossings on a state or county highway whenever practicable, in the manner provided by the railroad law. The portion of the cost of abolishing such grade crossings, which is payable under the railroad law by the state and town or village, shall be paid out of the funds available for the construction or improvement of such state or county highway as provided in this article.

§ 145-a. **Repair of highways at railroad crossings.** Whenever a highway crosses a railroad track at grade and such grade crossing is out of repair, if it is the judgment of the state commissioner of highways, the board of aldermen of a city, the board of trustees of a village or the town superintendent of highways of a town that the same should be repaired, the state commissioner of highways, the board of aldermen of a city, the board of trustees of a village or the town superintendent of highways of a town may repair and maintain the same and charge the expense thereof to the railroad company over whose railroad such crossing is repaired and maintained, if after fifteen days' notice in writing such railroad company neglects or refuses to repair the same.

Added by L. 1919, ch. 375.

## RAILROAD LAW.

§ 53-a. **Warning signs.** Every municipality or political subdivision or in case of state highways the state commission of highways, which is charged with the duty of maintaining a highway at places where such highway crosses a railroad at grade, shall install and maintain an approach warning sign in each such highway on each side of each railroad grade crossing at a distance therefrom of not less than three hundred feet. The approach warning sign shall consist of a circular metal disc twenty-four inches in diameter with a white field, and a black border line one inch wide and with black perpendicular and horizontal cross lines two and a half inches wide, the reverse side of each disc colored black. In each of the upper quarterings shall appear in black the letter R, five inches high, three and three-quarter inches wide, lines one inch stroke. The top of said sign shall be not more than five and not less than four feet above the grade of such highway, the exact height to be fixed so that the circular metal disc shall be most readily illuminated by the headlights of passing automobiles. The railroad company whose railroad is so crossed by the highway at grade shall on or before the first day of March, nineteen hundred and twenty, at its own expense furnish to such municipality, political subdivision or state commission of highways a sufficient number of approach warning signs of the character above described mounted on a suitable metal post nine feet in length to provide two such signs for each grade crossing on its line and such municipality, political subdivision or state commission of highways within sixty days after receipt of such signs shall install them in the manner above provided. The exact location of any such sign shall be determined by the public service commission for the district in which such railroad crossing is situated. In case of the failure or refusal of any such municipality or political subdivision or railroad company to install or furnish such signs as herein provided the public service commission for the district in which the crossing is located shall take proceedings to compel obedience to the provisions of this section by the municipality or political subdivision or by the railroad company. The supreme court at a special term upon application of the public service commission for the district in which the crossing is located shall have the power in all cases to compel compliance with the provisions of this section by mandamus subject to appeal to the appellate division of the supreme court and the court of appeals in the same manner and with like effect as is provided in case of appeals from an order of the supreme court.

Where physical conditions at any grade crossing are such that the commission for the district in which such crossing is located deems it impracticable to place such approach warning signs at a distance of three hundred feet or more from such crossing, such commission may determine another suitable location for any such sign or may by order release the municipality or other political subdivision or the state commission of highways from the obligation of installing and maintaining such signs and may by order direct other suitable warning signs to be furnished by the railroad company and installed and maintained by the municipality. The erection and maintenance in the highways of any sign or signs other than said approach warning signs may be prohibited by any such municipality, political subdivision or state commission of highways within three hundred feet of any such crossing.

It shall be the duty of the driver of any vehicle using such street or highway and crossing to reduce speed to a safe limit upon passing such sign and to proceed cautiously and carefully with the vehicle under complete control.

The public service commission for the district in which a crossing is located may require the railroad company or municipality or political subdivision which is charged with the duty of maintaining the highway wherever practicable to maintain its property at or near such grade crossing free of obstructions to vision.

Added by L. 1919, ch. 438.

The rights of a railroad company are taken and held subject always to the right of the proper public authorities to improve the highway as the public interest requires; also subject to the liability of being required to change its location, grade, etc., to conform to the requirements of such public improvement of the surface of the highway, at its own expense, without recourse in the way of damages against those lawfully engaged in improving the highway for any injury which may be done to the railroad property, when no reckless, wanton or negligent act on the part of those improving the highway caused the damage. Such changes and consequent injury to the plaintiff's property cannot be deemed the taking of private property for a public use. *M. F. C. & H. P. R. Co. v. Spuyten Duyvil Co.*, 65 Misc. 367 (1909), 121 N. Y. Supp. 656.

§ 21. **Railroads along highways.** No railroad corporation shall erect any bridge or other obstruction across, in or over any stream or lake, navigated by steam or sail boats at the place where it may be proposed to be erected, except as hereinafter provided, nor shall it construct its road in, upon or across any street of any city without the assent of the corporation of such city, nor across, upon or along any highway in any town or street in any incorporated village, without the order of the supreme court of the district in which such highway or street is situated, made at a special term thereof, after at least ten days' written notice of the intention to make application for such order shall have been given to the superintendent of highways of such town, or board of trustees of the village in which such highway or street is situated. A railroad corporation may construct and maintain a bridge for the purposes of its railroad, over any creek within this state, navigated as aforesaid, provided; that the consent of the public service commission be granted; and provided further, that in case such waters are used as a part of the canal system, that the consent of the canal board be obtained. Every railroad corporation which shall build its road along, across or upon any stream, watercourse, street, highway, plank-road or turnpike, which the route of its road shall intersect or touch, shall restore the stream or watercourse, street, highway, plank-road and turnpike, thus intersected or touched, to its former state, or to such state as not to have unnecessarily impaired its usefulness, and any such highway, turnpike or plank-road may be carried by it, under or over its track, as may be found most expedient. In all cases where a railroad crosses a highway at grade, the corporation owning or operating such railroad shall construct and maintain a roadway at least sixteen feet wide. Such roadway shall be constructed by planking, or equally serviceable material for making a permanent road bed, which shall extend at least one foot outside of the outside rails through and across the entire space between the rails at such crossing. Where an embankment or cutting shall make a change in the line of such highway, turnpike or plank-road desirable, with a view to a more easy ascent or descent, it may construct such

highway, turnpike or plank-road, on such new line as its directors may select, and may take additional lands therefor by condemnation if necessary. Such lands so taken shall become part of such intersecting highway, turnpike or plank-road, and shall be held in the same manner and by the same tenure as the adjacent parts of the highway, turnpike or plank-road are held for highway purposes. Every railroad corporation shall pay all damages sustained by any turnpike or plank-road corporation in consequence of its crossing or occupation of any turnpike or plank-road, and in case of inability to agree upon the amount of such damages it may acquire the right to such crossing or occupation by condemnation.

Amended by L. 1916, ch. 109.

§ 89. **New railroads across streets.** All steam surface railroads built after the first day of July, eighteen hundred and ninety-seven, except additional switches and sidings, must be so constructed as to avoid all public crossings at grade, whenever practicable so to do. Whenever application is made to the public service commission under section nine of this chapter there shall be filed with the commission a map showing the streets, avenues, highways and roads proposed to be crossed by the new construction, and the commission shall determine whether such crossings shall be under or over the proposed railroad, except where the commission shall determine such method of crossing to be impracticable. Whenever an application is made under this section to determine the manner of crossing, the commission shall designate a time and place when and where a hearing will be given to such railroad company, and shall notify the municipal corporation having jurisdiction over the streets, avenues, highways or roads proposed to be crossed by the new railroad. The commission shall also give public notice of such hearing in at least two newspapers, published in the locality affected by the application, and all persons owning land in the vicinity of the proposed crossing shall have the right to be heard. Upon such a notice and after a hearing, the public service commission may determine that alterations or changes may be made in any existing highway, at or in the vicinity of a proposed crossing for the purpose of avoiding a crossing at grade.

The decision of the commission rendered in any proceedings under this section shall be communicated, within twenty days after final hearing, to all parties to whom notice of the hearing in said proceedings was given, or who appeared at said hearing by counsel or in person. [Amended by L. 1914, ch. 378.]

§ 90. **New streets across railroads.** When a new street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road, or a state or county highway or county road deviating from the line of an existing highway or road, shall hereafter be constructed across a steam surface railroad, other than pursuant to the provisions of section ninety-one of this chapter, such street, avenue, highway or road or portion of such street, avenue, highway or road, shall pass over or under such railroad or at grade, as the public service commission shall direct. Notice of intention to lay out such street, avenue, highway, or road, or new portion of a street, avenue, highway or road, across a steam surface railroad shall be given to such railroad company by the municipal corporation at least fifteen days prior to the making

of the order laying out such street, avenue, highway or road by service personally on the president or vice-president of the railroad corporation, or any general officer thereof. In case of the construction of a state or county highway which deviates from the line of an existing highway across a steam surface railroad, a like notice shall be given to such railroad company by the state commission of highways at least fifteen days prior to the adoption of the maps, plans and specifications for such state or county highway by such commission. Such notice shall designate the time when and place where a hearing will be given to such railroad company, and such railroad company shall have the right to be heard before the authorities of such municipal corporation upon the question of the necessity of such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road, or before the state commission of highways in case of a state or county highway, on the question of the location of such highway. If the municipal corporation determines such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road to be necessary, or if the state commission of highways determines that such state or county highway which deviates from the line of an existing highway shall be constructed across such railroad at the place indicated in the maps, plans and specifications therefor, such municipal corporation or commission of highways shall then apply to the public service commission before any further proceedings are taken, to determine whether such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall pass over or under such railroad or at grade. The public service commission shall thereupon appoint a time and place for hearing such application, and shall give such notice thereof as it shall judge reasonable, not however less than ten days, to the railroad company whose railroad is to be crossed by such new street, avenue, highway or road, or new portion or additional width of a street, avenue, highway or road, to the state commission of highways, or in the case of a state or county highway which deviates from the line of an existing highway, to the municipal corporation and to the owners of land adjoining the railroad and that part of the street, avenue, highway or road to be opened, extended or constructed. The public service commission shall determine whether such street, avenue, highway or road, or new portion or additional width of a street, avenue, highway or road, or state or county highway shall be constructed over or under such railroad or at grade. If said commission shall determine that such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall be carried across such railroad above grade, then said commission shall determine the height, the length and the material of the bridge or structure by means of which such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall be carried across such railroad, and the length, character and grades of the approaches thereto. If said commission shall determine that such street, avenue, highway or road shall be constructed or extended below the grade, said commission shall determine the manner and method in which the same shall be so carried under, and the grade or grades thereof, and if said commission shall determine that said street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall be constructed or extended at

grade, said commission shall determine the manner and method in which the same shall be carried over said railroad at grade and what safeguards shall be maintained. The decision of the commission as to the manner and method of carrying new such street, avenue, highway or road, or new portion or additional width of a street, avenue, highway or road, or state or county highway which deviates from the line of an existing highway, across such railroad shall be final, subject however to the right of appeal hereinafter given. The decision of said commission rendered in any proceeding under this section shall be communicated within twenty days after final hearing to all parties to whom notice of the hearing of such proceeding was given, or who appeared at such hearing by counsel or in person. [Amended by L. 1914, ch. 378.]

§ 91. *Petition for alteration of existing crossing.* The mayor and common council of any city, the president and trustees of any village, the town board of any town, the board of supervisors of any county within which a street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road crosses or is crossed by a steam surface railroad at grade, below or above grade by structures heretofore constructed, or any steam surface railroad company, whose road crosses or is crossed by a street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road at grade, below or above grade, may bring their petition in writing to the public service commission, therein alleging that public safety requires an alteration in the manner of such crossing, its approaches, the method of crossing, the location of the crossing, a change in the existing structure by which such crossing is made, the closing and discontinuance of a crossing and the diversion of the travel thereon to another street, avenue, highway, road or crossing, or if not practicable to change such crossing from grade, below or above grade or to close or discontinue the same, the opening of an additional crossing for the partial diversion of travel from the grade below or above grade crossing, and praying that the same may be ordered. Where a street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road in a city, village, town or county, which crosses or is crossed by a steam surface railroad at grade, below or above grade, is a part of a highway which the state commission of highways shall have determined to construct or improve as a state or county highway, as provided in article six of the highway law, such commission of highways may bring a petition containing any of the allegations above specified and praying for a like order. Upon any such petition being brought the public service commission shall appoint a time and place for hearing the petition, and shall give such personal notice thereof as it shall judge reasonable, of not less than ten days, however, to such petitioner, the railroad company, the municipality in which such crossing is situated, and if such crossing is in whole or part in an incorporated village having not to exceed twelve hundred inhabitants, also to the supervisor or supervisors of the town or towns in which such crossing is situated; and in all cases to the owners of the lands adjoining such crossing and adjoining that part of the street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road to be changed in grade or location, or the land to be opened for a new crossing, and to the state commission of highways in case of a state or county highway. The public service commission shall cause

notice of said hearing to be advertised in at least two newspapers published in the locality affected by the application. Upon such notice and after a hearing the public service commission shall determine what alterations or changes, if any, shall be made. If the application be made by the state commission of highways in respect to a street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road proposed to be constructed or improved as a part of a state highway, the decision shall state whether such highway shall cross such railroad above or below the grade of the highway; in case of a county highway, such decision shall state whether such highway shall cross such railroad at grade, or above or below the grade of the highway. The decision of said public service commission rendered in any proceeding under this section shall be communicated within twenty days after final hearing to all parties to whom notice of the hearing in said proceeding was given, or who appeared at said hearing by counsel or in person. Any person aggrieved by such decision, or by a decision made pursuant to sections eighty-nine and ninety hereof, and who was a party to said proceeding, may within sixty days appeal therefrom to the appellate division of the supreme court in the department in which such grade crossing is situated, and to the court of appeals, in the same manner and with like effect as is provided in the case of appeals from an order of the supreme court.

Amended by L. 1913, ch. 354, and L. 1914, ch. 378.

§ 93. Repair of bridges and subways at crossings. When a highway crosses a railroad by an overhead bridge, the framework of the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the roadway thereover and the approaches thereto shall be maintained and kept in repair by the municipality having jurisdiction over and in which the same are situated; except that in the case of any overhead bridge constructed prior to the first day of July, eighteen hundred and ninety-seven, the roadway over and the approaches to which the railroad company was under obligation to maintain and repair, such obligation shall continue, provided the railroad company shall have at least ten days' notice of any defect in the roadway thereover and the approaches thereto, which notice must be given in writing by the town superintendent of highways or other duly constituted authority, and the railroad company shall not be liable by reason of any such defect unless it shall have failed to make repairs within ten days after the service of such notice upon it. When a highway passes under a railroad, the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the subway and its approaches shall be maintained and kept in repair by the municipality having jurisdiction over and in which the same are situated. In case such highway is a part of a state or county highway constructed or improved as provided in article six of the highway law, the roadway over such railroad or the subway underneath the same, and the approaches thereto, shall be maintained and kept in repair under the supervision and control of the state commission of highways in the manner provided by the highway law for the maintenance and repair of state and county highways where such roadway, subway or approaches, or any of them, have been constructed or improved as a part of a state or county highway.

Amended by L. 1916, ch. 484.

§ 94. Expense of constructing new crossings. 1. Whenever under the provisions of section eighty-nine of this chapter, a new railroad is constructed across an existing highway, the expense of crossing above or below the grade of the highway including any expense incurred in altering or changing the highway under a determination of the public service commission shall be paid entirely by the railroad corporation.

2. Whenever under the provisions of section ninety of this chapter a new street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road is constructed across an existing railroad, the railroad corporation shall pay one-half and the municipal corporation having jurisdiction over such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall pay the remaining one-half of the expense of making such crossing above or below the grade of the railroad.

3. Whenever a change is made as to an existing crossing or structure in accordance with the provisions of section ninety-one of this chapter, fifty per centum of the expense thereof shall be borne by the railroad corporation, twenty-five per centum by the municipal corporation and twenty-five per centum by the state; except that whenever an existing crossing, in which a change is made under the provisions of section ninety-one, is located wholly or partly within an incorporated village having not to exceed twelve hundred inhabitants, the portion of expense herein required to be borne by the municipal corporation shall be borne by the town or towns in which such crossing is situated.

4. Whenever under the provisions of sections ninety and ninety-one of this chapter a highway is constructed across an existing railroad and is a part of a state or county highway constructed or improved as provided in the highway law, one-half of the expense of making such crossing above or below grade or changing or rebuilding the existing structure by which such crossing is made, shall be paid by the railroad corporation, and the remaining one-half of such expense shall be paid by the state in the case of a state highway, and jointly by the state, county and town in the case of a county highway, in the same proportion and in the same manner as the cost of construction or improvement of such state or county highway is paid.

5. Whenever in carrying out the provisions of sections ninety or ninety-one of this chapter two or more lines of steam surface railroad, owned and operated by different corporations, cross a highway at a point where a change in grade is made, each corporation shall pay such proportion of fifty per centum of the expense thereof as shall be determined by the public service commission.

6. In carrying out the provisions of sections eighty-nine, ninety and ninety-one of this chapter the work shall be done by the railroad corporation or corporations affected thereby, subject to the supervision and approval of the public service commission; and in all cases, except where the entire expense is paid by the railroad corporation, the expense of construction shall be paid primarily by the railroad company, and the expense of acquiring additional lands, rights or easements shall be paid primarily by the municipal corporation having jurisdiction over the street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road or, in case

of a state or county highway, upon the order of the state commission of highways out of moneys available therefor. Plans and specifications of all changes proposed under sections ninety and ninety-one of this chapter and an estimate of the expense thereof shall be submitted to the public service commission for its approval before the letting of any contract. If such changes are proposed in a highway which is to be constructed or improved as a state or county highway, such plans and specifications shall also be submitted to the state commission of highways for its approval before the letting of any contract. In case the work is done by contract the proposals of contractors shall be submitted to the public service commission, and if the commission shall determine that the bids are excessive it shall have the power to require the submission of new proposals. The commission may employ temporarily such experts and engineers as may be necessary properly to supervise any work that may be undertaken under sections eighty-nine, ninety and ninety-one of this chapter, the expense thereof to be paid by the comptroller upon the requisition and certificate of the commission and included in the cost of the particular change in grade or in the structure above or below on account of which it is incurred and finally apportioned in the manner provided in this section.

7. Upon the completion of the work and its approval by the public service commission an accounting shall be had between the railroad corporation and the municipal corporation or the state commission of highways of the amounts expended by each with interest, and if it shall appear that the railroad corporation or the municipal corporation or the state commission of highways has expended more than its proportion of the expense of the crossing as herein provided a settlement shall be forthwith made in accordance with the provisions of this section. At any time after the work of elimination of a crossing has been commenced the public service commission may, upon its own motion or upon the petition of the railroad company or of any municipality interested or of the state commission of highways, make an order for an intermediate settlement and direct payments to be made in connection therewith as in this section provided for a final accounting. All items of expenditure shall be verified under oath, and in case of a dispute between the railroad corporation and the municipal corporation or the state commission of highways as to the amount expended, any judge of the supreme court in the judicial district in which the municipality or the state or county highway is situated may appoint a referee to take testimony as to the amount expended, and the confirmation of the report of the referee shall be final. In the event of the failure or refusal of the railroad corporation to pay its proportion of the expense, the same with interest from the date of such accounting may be levied and assessed upon the railroad corporation and collected in the same manner that taxes and assessments are now collected by the municipal corporation within which the work is done; and in the event of the failure or refusal of the municipal corporation to pay its proportion of the expense an action may be maintained by the railroad corporation for the collection of the same with interest from the date of such accounting, or the railroad corporation may offset such amount with interest against any taxes levied or assessed against it or its property by such municipal corporation.

8. In the event of the appropriation made by the state in any one year being insufficient to pay the state's proportion of the expense of any change that may be ordered the first payment from the appropriation of the succeeding year shall be on account of said change, and no payment shall be made on account of any subsequent change that may be ordered, nor shall any subsequent change be ordered, until the obligation of the state on account of the first named change in grade has been fully discharged, unless the same shall be provided for by an additional appropriation to be made by the legislature. The state's proportion of the expense of changing any existing grade crossing or the structure of any existing crossing above or below grade shall be paid by the state treasurer on the warrant of the comptroller, to which shall be appended the certificate of the public service commission to the effect that the work has been properly performed and a statement showing the situation of the crossing or structure that has been changed, the total cost and the proportionate expense thereof; and the money shall be paid in whole or in part to the railroad corporation or to the municipal corporation as the public service commission may direct, subject, however, to the rights of the respective parties as they appear from the accounting or intermediate accounting to be had as hereinbefore provided for.

9. No claim for damages to property on account of the change or elimination of any crossing or change in structure under the provisions of this article shall be allowed unless notice of such claim is filed with the public service commission within six months after completion of the work necessary for such change or elimination.

Amended by L. 1914, ch. 378 and L. 1915, ch. 240.

10. Upon the acquisition of any railroad by the public, under the right of eminent domain or by and under any statute providing for the acquisition, use or operation thereof, any and all sums of money paid and contributed by the state or any political subdivision thereof toward the expense of constructing new crossings as in this article provided, shall be credited, allowed and deducted in determining the value of such property or the basis of computing or allowing compensation therefor.

Added by L. 1919, ch. 439.

§ 95. Proceedings by public service commission for alteration of grade crossings. The public service commission may in the absence of any application therefor, when in its opinion public safety requires an alteration in an existing grade crossing or a change in any existing structure above or below grade, institute proceedings on its own motion for an alteration in such grade crossing or structure, upon such notice as it shall deem reasonable, of not less than ten days however, to the railroad company, the municipal corporation and the person or persons interested, and proceedings shall be conducted as provided in section ninety-one of this chapter. The changes in existing grade crossings or structures authorized or required by the commission in any one year shall be so distributed and apportioned over and among the railroads and the municipalities of the state as to produce such equality of burden upon them for their proportionate part of the expenses as herein provided for as the nature and circumstances of the cases before it will permit.

§ 99. Application of foregoing sections. The provisions of sections eighty-nine to ninety-eight inclusive of this chapter shall also apply to all steam surface railroads existing on the first day of July, eighteen hundred and ninety-seven, or thereafter, on which, after said date, electricity or some other agency than steam shall be substituted as a motive power. None of the provisions of said sections shall apply to crossings in the city of Buffalo under the jurisdiction of the grade crossing commissioners of that city. The terms "municipality" and "municipal corporation" as used in said sections shall include cities, villages, towns and counties.

Amended by L. 1915, ch. 613.

§ 146. Railroads and other works and structures in and upon highways. No street surface or other railroad shall be constructed upon any portion of a state or county highway which has been or may be improved under the provisions of this article, nor shall any person, firm or corporation enter upon or construct any works in or upon any such highway, or construct any overhead or underground crossing thereof, or lay or maintain therein drainage, sewer or water pipes underground, except under such conditions and regulations as may be prescribed by the commissioner of highways, notwithstanding any consent or franchise granted by any town, county or district superintendent, or by the municipal authorities of any town. Any person, firm or corporation violating this section shall be liable to a fine of not less than one hundred dollars nor more than one thousand dollars for each day of such violation, to be recovered by the commissioner of highways and paid to the state treasurer to the credit of the fund for the maintenance and repair of state and county highways, and may also be removed therefrom as a trespasser by the commissioner of highways upon petition to the county court of the county or the supreme court of the state.

Amended by L. 1911, ch. 646 and L. 1913, ch. 80.

#### TRANSPORTATION CORPORATIONS LAW, SECTIONS 25 and 26.

§ 25. Additional persons and corporations subject to the public service commissions law. Any person or any corporation who or which owns or operates a stage route, bus line or motor vehicle line or route or vehicles described in the next succeeding section of this act wholly or partly upon and along any street, avenue or public place in any city shall be deemed to be included within the meaning of the term "common carrier" as used in the public service commissions law, and shall be required to obtain a certificate of convenience and necessity for the operation of the route or vehicles proposed to be operated, and shall be subject to all the provisions of the said law applicable to common carriers.

§ 26. Consent required. No bus line, stage route nor motor vehicle line or route, nor any vehicle in connection therewith, nor any vehicles carrying

passengers at a rate of fare of fifteen cents or less for each passenger within the limits of a city or in competition with another common carrier which is required by law to obtain the consent of the local authorities of said city to operate over the streets thereof shall be operated wholly or partly upon or along any street, avenue or public place in any city, nor receive a certificate of public convenience and necessity until the owner or owners thereof shall have procured, after public notice and a hearing, the consent of the local authorities of said city, as defined by the railroad law, to such operation, upon such terms and conditions as said local authorities may prescribe, which may include provisions covering description of route, rate of speed, compensation for wear and tear of pavement, improvements and bridges, safe-guarding passengers and other persons using such streets, and no such operation upon the streets of any such city shall be permitted until the owner or operator of such vehicles or proposed line or route shall if required by such local authorities have executed and delivered a bond to such city in an amount fixed by said local authorities and in the form prescribed by the chief law officer of said city with sureties satisfactory to the chief fiscal officer of said city, which bond may be required to provide adequate security for the prompt payment of any sum accruing to said city, and the performance of any other obligations, under the terms and conditions of such consent, as well as adequate security for the payment by such owner of any damages occurring to, or judgment recoverable by, any person on account of the operation of such line or route, or any fault in respect thereto.

Added by L. 1913, ch. 495 and amended by L. 1915, ch. 667.

§ 147. Where cost is assessable against abutting owners. If fifteen per centum of the cost of constructing or improving a highway has been or may be assessed upon abutting owners, as authorized by section ten of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, as the same existed prior to its repeal by chapter four hundred and sixty-eight of the laws of nineteen hundred and six, such highway shall be constructed or improved at the joint expense of the state, county and town as provided herein, and the portion of the cost so assessable upon such owners, shall be paid by the town in which such highway is located, as provided in this article.

§ 148. Acquisition of lands for right of way and other purposes. If a state or county highway, proposed to be constructed or improved as provided in this article, or which shall have been heretofore constructed, or which it is proposed to repair or reconstruct as provided in article seven of this chapter, or in which it is proposed to change the course of a dangerous section thereof, shall deviate from the line of a highway already existing, the board of supervisors of the county where such highway is located, shall acquire land for the requisite right of way prior to the advertisement for proposals. The board of supervisors may also

acquire lands for the purpose of obtaining gravel, stone or other material, when required for the construction, reconstruction, improvement or maintenance of highways, or for spoil banks together with a right of way to such spoil banks and to any bed, pit, quarry, or other place where such gravel, stone or other material may be located.

Amended by L. 1917, ch. 261, and L. 1918, ch. 326.

**§ 149. Purchase of lands.** The board of supervisors may, by resolution, authorize its chairman, a member, or a committee to purchase the lands to be acquired for the purposes specified in the preceding section. But the amount to be paid under this section to a single owner shall not exceed the sum of two hundred dollars, unless approved by the county judge and county treasurer, and in no case shall such amount exceed the sum of one thousand dollars. The purchase price of such lands shall be a county charge, and shall be paid in the same manner as awards are paid in cases where the proceedings are taken as herein required.

**§ 149-a. Purchase of land in certain counties.** The board of supervisors in a county adjoining a city of the first class containing over two million inhabitants may, by resolution, authorize the purchase of land to be acquired for the purpose specified in section one hundred and forty-eight of this chapter. The purchase price of such lands, however, shall not exceed the sum of five thousand dollars; it shall be a county charge and shall be paid in the same manner as other county charges are paid.

Added by L. 1916, ch. 12. (Applies to Nassau and Westchester counties only.)

**§ 150. Petition to acquire lands.** If the board of supervisors is unable to acquire land by purchase as provided for in the last section, the board may present to the county court of the county or to the supreme court, at a special term thereof, to be held in the judicial department in which said county is located, a petition for the appointment of three commissioners of appraisal to ascertain and determine the compensation to be paid to the owners of the land to be acquired and to all persons interested therein. Such petition shall describe the land to be acquired with a reference to the map upon which the same is shown which shall be annexed to such petition. A copy of such petition and map shall

be filed in the office of the county clerk. Such petition shall be signed and verified in the name of the board of supervisors, by the chairman or a member thereof designated for that purpose by resolution. Notice of presentation of such petition to such court shall be given by the petitioner by publishing such notice in two newspapers published in such county, once in each week for two weeks successively preceding the day of such presentation, and also at least eight days preceding the day of such presentation by serving a copy of such notice, personally or by mail, on the occupant or owner of the land to be acquired, and by posting a copy of said notice in not less than three public places in each town in which property to be acquired is located.

Amended by L. 1911, ch. 503, and L. 1917, ch. 140.

**§ 151. Commissioners to be appointed.** Upon such presentation, such court shall, after hearing any person owning or claiming an interest in the lands to be acquired who may appear, appoint three disinterested persons as commissioners. And in case a commissioner shall at any time decline to serve, or shall die, or for any cause become disqualified or disabled from serving as such, the said court, at a similar special term, may, upon similar notice, application and hearing, and upon such notice to the land owners as the court may prescribe, appoint another person, similarly qualified, to fill the vacancy caused thereby.

**§ 152. Duties of commissioners.** The said commissioners shall take the oath of office prescribed by the constitution, which oath shall be filed in the office of the county clerk of the county. Upon the filing of such oath the title to the lands described in the petition and map filed in the office of the county clerk shall vest in the county for the purpose of a highway forever. The commissioners shall, with all reasonable diligence, proceed to examine such highways and lands. Said commission shall cause a notice to be published in two such newspapers as aforesaid, once each week for two weeks successively next preceding the day of meeting mentioned in such notice, that at a stated time and place within such county they will meet for the purpose of hearing the parties claiming an interest in the damages to be awarded for the lands taken for such highways. Said notice shall also state the fact that a map or maps showing the land acquired has been filed in the county clerk's office. At the time and place of said meeting and at any

adjournment thereof which said commissioners shall publicly make, they shall hear the proofs and allegations of all interested parties. They may adjourn the proceedings before them from time to time, issue subpoenas or administer oaths in such proceedings; and shall keep minutes of their proceedings and reduce to writing all oral evidence given before them. They shall thereafter make and sign a report in writing, in which they shall assess, allow and state the amount of damages to be sustained by the owners of the several lots, pieces or parcels of land taken for the purposes aforesaid. Such report shall contain the names of the owners of any parcel of land acquired as aforesaid, except that in case the commissioners are unable to ascertain the names of such owners, they may in place of the name of such undiscovered parties insert the words "unknown owners," in their report. The said commissioners shall file their said report, together with the minutes of their proceedings, in the office of county clerk of such county. After said report shall have been completed and filed as aforesaid, the commissioners shall, after publishing a notice in like manner as that provided in section one hundred and fifty-two, apply to the county court of the county or to the supreme court, at a special term thereof to be held in the judicial department in which said county is located, to have the said report confirmed. If no sufficient reason to the contrary shall appear, the court shall confirm said report. Otherwise it may refer the same back to the said commissioners for revision or correction; and after such revision or correction the same proceedings shall be taken as are hereinbefore provided for, and the commissioners shall in the same manner make renewed application for the confirmation of such report, and the court shall thereupon confirm or refer back the said report, and such proceedings shall be repeated until a report shall be presented which shall be confirmed by the said court.

Amended by L. 1911, ch. 503.

§ 153. **County treasurer to pay awards.** Within six months after the report of said commissioners shall be confirmed as aforesaid, the county treasurer of such county shall pay to the persons named therein the amounts awarded to them for damages with six per centum interest thereon from the date of the filing of the oath of the commissioners in the office of the county clerk. Such amounts with interest and the amounts paid in pursuance of this article

shall be a county charge and shall be paid by the county treasurer, in case of purchase upon requisition of the chairman of the board of supervisors of said county, or by any member or committee thereof designated for that purpose by said board and in case of a petition for the acquisition of such lands, upon service of a certified copy of the order confirming such awards. In case there are unknown owners, to whom the award is made in said report, the said county treasurer shall deposit the amounts awarded to them with like interest in some trust company or bank in such manner as the said court shall in the order of confirmation direct, such amount to be paid out upon the application of said unknown owners when discovered.

Amended by L. 1911, ch. 503.

§ 154. **Costs; commissioners' fees.** In all cases of assessment of damages by commissioners appointed by the court, the costs thereof shall be awarded pursuant to the provisions of section thirty-three hundred and seventy-two of the code of civil procedure and shall be a county charge in the first instance, and be paid by the county treasurer as hereinbefore provided, except when reassessment of damages shall be had on the application of the party for whom damages were assessed, and such damages shall not be increased on such reassessment, the cost shall be paid by the party applying for the reassessment, and when application shall be made by two or more persons for reassessment of damages all persons who may be liable for costs under this section shall be liable in proportion to the amount of damages respectively assessed to them by the first assessment, and may be recovered by action. Each commissioner appointed by the court as provided in this article for each full day necessarily employed as such, shall be entitled to the sum of six dollars and his necessary expenses. The amount of compensation to which such commissioners are entitled shall be determined by the court in which the proceeding is pending, upon verified accounts presented by such commissioners, stating in detail the number of hours necessarily employed in the discharge of their duties; and the nature of the services rendered, upon eight days' notice to the attorney for the petitioner in the proceeding.

Amended by L. 1912, ch. 182 and L. 1915, ch. 497.

§ 155. **Land may be sold or leased; disposition of proceeds.** Any lands acquired by purchase or condemnation, for the purpose of

obtaining gravel, stone or other materials, for the construction or maintenance of highways improved or constructed as provided in this article, or required for spoil banks, may be sold or leased by the board of supervisors of any county, when no longer needed for any of such purposes. The proceeds thereof shall be paid into the county treasury and shall be retained therein as a separate fund available for the construction or maintenance of highways improved or constructed under this article. The board of supervisors may, where it has acquired land by purchase or condemnation as a right-of-way for a state or county highway, sell, convey, grant or lease to the owner or owners of property adjoining the same, so much thereof as may be unnecessary for such highway purposes, provided the strip of land retained for such highway purposes is not less than sixty feet in width, and provided such sale, conveyance, grant or lease will give said adjoining owner or owners of land a frontage immediately in front of their respective premises upon the new highway and right-of-way when completed. The board of supervisors may make such sale, conveyance, grant or lease to such owner or owners of real property for the purpose of compensating such owner or owners for damages sustained by reason of the change of the location of such highway and in full settlement thereof.

Amended by L. 1911, ch. 552.

#### COUNTY LAW SECTIONS 32 AND 33

32. The board of supervisors of any county containing a population of less than two hundred thousand and adjoining a city of the first class may authorize the establishment of a plan for the grades of streets, avenues and boulevards; the alteration of such plan of grades, or of any plan thereof, which shall have been established by law; the laying out, opening, grading, construction, closing and change of line, or of the width of any one or more of such streets, avenues and boulevards or any other streets, avenues and boulevards, within said county, or any part or parts thereof, and of the courtyards, sidewalks and roadways; to provide for the estimation and award of the damages to be sustained, and for the assessment on property intended to be benefited thereby, and fixing assessment districts therefor, the levying, collection and payment of such damages, and of all other charges and expenses to be incurred, or which may be necessary in carrying out the provisions of this subdivision; the laying out of new or additional streets, avenues or boulevards according to a general scheme or plan for the improvement of highways in said town, the acceptance by town officers of conveyances of land for public highways, naming and changing of names of streets and avenues within the said county, the opening, laying out, grading, construction, closing and change of line of any street, avenue or boulevard within the county, provided, however, that nothing shall be done hereunder

respect to or concerning any street, avenue or boulevard situated within an incorporated village, without the consent of the board of trustees of such incorporated village. The provisions, however, for the defraying of the expenses thereof by assessment as herein provided, shall only be exercised on the petition of the property owners who own more than one-half of the frontage on any such street, avenue or boulevard, or on the certificate of the supervisor, justices of the peace, and town clerk of the town in which said street, avenue or boulevard is located, or two-thirds of such officers, that the same is in their judgment proper and necessary for the public interest; or in case the said street, avenue, or boulevard, in respect to which such action is proposed to be taken, shall lie in two or more towns, on a like certificate of such town officers of each said towns, or two-thirds of all of them; provided, however, that before proceeding to make any such certificate, the said officers, or such number of them as aforesaid, shall give ten days' notice by publication in one of the weekly papers of said county and by posting in six public places in said town, or in each of said towns, of the time and place at which they will meet for the purpose of considering the same, at which meeting the public and all persons interested may appear and be heard in relation thereto; and provided that no such street or avenue shall be laid out, opened or constructed upon or across any lands heretofore acquired by the right of eminent domain, and held in fee for depot purposes by any railroad.

33. Should the board of supervisors of any county containing a population of less than two hundred thousand and adjoining a city of the first class at any time deem it for the public interest to acquire title to lands and premises required for any streets, highway or boulevard heretofore or hereafter laid out, widened, altered, extended or otherwise improved, it may acquire the same by dedication, or by condemnation under the condemnation law, provided, however, that no land shall be acquired for any street, highway or boulevard in an incorporated village without the consent of the board of trustees of such incorporated village. Such board may direct, by a two-thirds vote, where no buildings are upon the lands, that the title to any piece or parcel of land lying within the lines of any such street, highway, or boulevard shall be vested in the county upon the date of recovery of such dedication or upon the date of the filing of the oath of the condemnation commissioners as provided in the condemnation law, or upon a specified date thereafter and where there are buildings upon such lands, upon a date not less than six months from the date of the filing of said oath. Thereafter, when the condemnation commissioners shall have taken and filed said oath, upon the date of such filing or upon such subsequent date as may be specified, where no buildings are upon such lands and where there are buildings upon such lands upon the date specified by said board of supervisors either before or after the filing of such oath, the same being not less than six months from the date of said filing, the county shall become and be seized in fee of said lands, tenements, and hereditaments in the said resolution mentioned, that shall or may be so required as aforesaid, the same to be held, appropriated, converted and used to and for such purpose accordingly, in like manner as are other public streets in said county. In such cases interest at the legal rate upon the sum or sums to which the owners, lessees, parties or persons are justly

entitled upon the date of the vesting of title in the county as aforesaid, from said date to the date of the report of the commissioners shall be allowed by the commissioners as a part of the compensation to which such owners, lessees, parties or persons are entitled. In the other cases, title, as aforesaid, shall vest in the county upon the confirmation by the court of the report of the condemnation commissioners. Upon the vesting title as herein provided, the county or any person or persons acting under its authority, may immediately, or at any time thereafter take possession of the same, or any part or parts thereof, without any suit or proceeding at law for that purpose. The title acquired by the county, to lands and premises required for a street, shall be in trust, and such lands and premises appropriated and kept open for, or as part of a public street or highway, forever, in like manner as the other streets in the county.

Amended by L. 1916, ch. 5. (Applies to Nassau county only.)

**§ 156. Application of provisions of labor law.** The provisions of section three of the labor law, as amended by chapter five hundred and six of the laws of nineteen hundred and six, which except from the provisions of that section labor performed in the construction, maintenance and repair of highways outside the limits of cities and villages, shall apply to the construction, improvement and maintenance of state and county highways as provided in this chapter.

**§ 157. Highways and bridges on Indian reservations.** When any portion of a county highway designated for improvement or construction in a county, as provided in this article, is located on an Indian reservation, the entire cost of the improvement or construction of such portion shall be paid by the state in the same manner as the state's share of the cost of such county highway, out of any specific appropriation made available for the construction or improvement of county highways. The commission shall have exclusive supervision and control of all bridges constructed or to be constructed by the state on any Indian reservation, and may make and enforce such reasonable rules and regulations concerning their use, as it shall deem necessary.

**§ 158. Appointment and duties of reservation superintendent.** The commission may appoint a reservation superintendent for any Indian reservation in the state who shall exercise the powers and perform the duties conferred and imposed upon town superintendents, except that the written statement as provided for by section ninety of the highway law shall be filed with the commission on or before the thirty-first day of October in each year,

and excepting that all orders of the Indian reservation superintendent shall be drawn upon and presented for payment as herein-after provided to the county treasurer of the county in which such Indian reservation or major portion thereof exists.

While any such reservation superintendent shall be acting in that capacity no highway within such reservation shall be laid out, altered, or discontinued, without his consent. Whenever land may be acquired without expense or is dedicated for highway purposes within any Indian reservation, the reservation superintendent in charge thereof may make an order laying out the said highway by filing and recording said order in the town clerk's office of the town in which said highway is located. He shall also file said order with the recording officer of the tribe through whose lands such highway extends.

§ 159. *Custody of moneys, et cetera.* There shall be paid by the state treasurer to the county treasurer of each county in the state containing an Indian reservation, reservations, or major portion of an Indian reservation, an amount which shall not be less than thirty dollars per mile, based on the entire mileage of the public highways within the Indian reservation in such county. All moneys of the state available for the improvement, repair and maintenance of highways and bridges and for the purchase of machinery, tools and implements within Indian reservations shall be paid to the county treasurer of each county containing such Indian reservation or major portion thereof, who shall be the custodian thereof and accountable therefor, and it shall be expended for the repair and improvement of the public highways and bridges and for the purchase of machinery, tools and implements within such Indian reservations at such places and in such manner as may be directed by the commission, and such moneys shall be paid out by the county treasurer upon the written order of the Indian reservation superintendent in accordance with such directions. The county treasurer and the Indian reservation superintendent shall keep their accounts according to the methods and use the blanks as prescribed by the commission. All orders and records of accounts shall be filed in the office of the commission on or before the thirty-first day of October in each year and shall be preserved by the commission as Indian reservation records. The reservation superintendent shall receive a per diem or annual allowance as compensation for services and expenses in an amount to be fixed by the commission, which shall be paid by

the county treasurer to the reservation superintendent upon orders of the commission. The commission shall annually cause to be inspected all of the bridges within the Indian reservations of each county and shall require a complete report of such inspection which shall show in detail the condition of the bridges inspected, the necessary work to be performed in the repair and maintenance of such bridges and the estimated cost thereof. The commission shall revise such estimates and annually report to the legislature its estimated cost for such repairs and construction for the ensuing year in detail by reservation and county. The maintenance, repair and construction of the public highways within the Indian reservation shall be under the direct supervision and control of the commission and the state superintendent of highways and they shall be responsible therefor as herein provided. There shall be annually appropriated for the construction, repair and maintenance of such highways and bridges and for the purchase and repair of machinery, tools and implements, an amount sufficient to provide therefor, based upon the estimates prepared and submitted by the commission to the legislature. The comptroller upon requisition of the commission shall draw his warrant on the state treasurer in favor of the county treasurer who is the custodian of such funds as herein provided for an amount which shall not be in excess of the total amount apportioned by the commission to the Indian reservation of any county. The moneys so paid shall be deposited by said county treasurer to the credit of the fund for the maintenance, repair and construction of highways and bridges and the purchase and repair of machinery, tools and implements in the Indian reservation of said county.

Amended by L. 1910, ch. 46; L. 1911, ch. 646 and L. 1913, ch. 474.

§ 160. **Maintenance of detours during construction.** The maintenance and repair of any highway or right of way designated by the commission for use as a detour, during the construction, reconstruction or repair of a state or county highway, shall be under the supervision of the commission and shall be paid out of the construction fund, in cases of construction or improvement contracts, or the state's share of the money available for maintenance and repair of improved roads in such county in cases of reconstruction or repair contracts. Such highway or right of way designated as a detour by the commission shall be deemed as an improved highway during construction, reconstruction or repair.

Amended by L. 1912, ch. 83 and L. 1916, ch. 578.

## ARTICLE VI-A.

## Improvement with Federal Aid.

- Section 161. Commissioner of highways to designate roads.  
162. Cost of preliminary surveys.  
163. Approval of plans.  
164. Advertisements, proposals, contracts, appropriation, closing roads, detours, termination of contract, entry for drainage, permits, maintenance and repair, contingencies and agreements.  
165. Acceptance of work.  
166. Acquisition of right of way.  
167. State's share of cost.  
168. General authorization.

§ 161. The state commissioner of highways is hereby authorized, empowered and directed to designate the public highways or portions thereof, outside of cities, which, in his discretion, he may deem proper to be improved or constructed as co-operative roads with the moneys to be appropriated by the state of New York and the moneys contributed to the state of New York for highway improvement by the federal government under the provisions of an act of congress, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes," approved July eleventh, nineteen hundred and sixteen; provided that the highways or portions thereof thus designated shall form a portion of the system of state or of county highways as provided by this chapter, or shall form a connection between state, county and federal highways duly authorized by law of this or any other state or nation, for the purpose of aiding in the completion of the system of improved highways of the United States of America. The highways thus designated shall be tentatively indicated on a map to be prepared by, and filed in the office of, the state commissioner of highways; and a duplicate thereof shall be filed in the office of the secretary of state of New York state on or before the fifteenth day of May, nineteen hundred and seventeen; subject, however, to such modification as may hereafter be submitted by the state commissioner of highways and approved by the United States secretary of agriculture in accordance with section one of the act of congress hereinbefore referred to. The designations indicated on such map are dependent, however, on provision being made by the governing boards of the political subdivisions of the state for the improvement of such other highways as are deemed necessary, in the

opinion of the state commissioner of highways, to complete the combined highway system of the state.

§ 162. Preliminary surveys, plans, specifications and estimates of cost for the highways or portions thereof so designated shall be made by the state department of highways in the same manner as prescribed in section one hundred and twenty-five of the highway law and the expense thereof shall be paid out of the moneys appropriated by the state for the purposes of this article.

§ 163. After the submission to, and approval by the secretary of the United States department of agriculture, of such plans, specifications and estimates of cost, as required by the provisions of said act of congress, the same shall be approved by the commissioner of highways by executive order; which order shall give a consecutive number to the highway a portion thereof covered by said plans. A certified copy of such order shall be filed with said secretary of agriculture and with the state comptroller. Roads shall be taken up for construction or improvement in the order of final approval unless the commissioner of highways deems otherwise advisable, in which event an executive order shall be filed in the office of the highway department giving the reasons for deviating from such order, and a certified copy thereof filed with said secretary and with the state comptroller.

§ 164. The form of proposal, contract and bond, the method of advertising for proposals, the rejection of proposals, the award of contracts and the payments to contractors shall be governed by the provisions of section one hundred and thirty of this chapter. To expedite the payment of the share of the federal government as shown by monthly estimates rendered on existing contracts as provided herein it is hereby provided that upon the filing of the report of the commissioner of highways with the legislature, showing the amount of construction under federal aid contemplated for the ensuing year, and in case an appropriation is made by the legislature to provide the state's share of the construction shown in such report, there shall also be appropriated such an additional amount as is necessary to pay in the first instance the share of the federal government of the cost of such work. Itemized statements showing the entire cost of construction of such roads shall be rendered by the commissioner of highways to the state comptroller and the federal government as the work progresses and such statements shall show the subdivision of cost between the state and

the federal government and shall be accompanied by drafts on the federal government for the amount of its share of such cost. Upon the payment of such drafts the proceeds shall be deposited by the commissioner of highways with the treasurer of the state for the purpose of reimbursing the appropriation made by the state on account of such advance payments, and upon the final completion of the work a report thereof filed with the state comptroller. The provisions of sections seventy-seven and one hundred and sixty of this chapter, relative to closing highways for repair or construction and the maintenance of detours during construction; also the provisions of section one hundred and thirty-two of this chapter relative to the authority of the commissioner to secure the completion of the work; also the provisions of sections one hundred and thirty-five and one hundred and thirty-six of this chapter, relative to the entry upon adjacent lands for drainage purposes and the payment of damages for such entry; also the provisions of sections one hundred and thirty-seven, one hundred and thirty-eight and one hundred and thirty-eight-a, relative to construction in villages and to additional width and increased cost; also the provisions of section one hundred and forty-six of this act, relative to the issuance of permits for work by persons, firms or corporations; also the provisions of section one hundred and fifty-six relative to the application of the labor law; shall all be applicable for the purposes of highways improved or constructed under the provisions of this article. The provisions of article seven of this chapter relative to the maintenance of state and county highways shall apply to the maintenance and repair of highways improved or constructed under the provisions of this article. All contingencies arising during the prosecution of the work shall be provided for to the satisfaction of the commissioner of highways and as may be agreed upon in the original or by a supplemental contract executed by the commissioners. If a supplemental contract be executed for the performance of work or the furnishing of material not provided for in the original contract, the amount to be charged thereunder for any such work or materials shall not exceed the rate for which similar work or material was agreed to be performed or furnished under the original bid upon which the contract was awarded. Any work necessarily required for the proper completion of the contract and for which no item price bid was contained in the proposal shall be performed upon prices to be agreed upon by the contractor and the commissioner prior to the performance of such work, and such work and the prices therefor shall be provided in a

supplemental contract. The total amount to be expended in the improvement or construction of a highway or section thereof shall not exceed the original estimate, unless such estimate shall have been duly amended by the commissioner with the approval of the secretary of agriculture.

§ 165. Upon the completion of a highway or section thereof constructed or improved under the provisions of this article, the division engineer shall inspect the same and shall report in writing to the state commissioner of highways his recommendation as to whether or not the contract should be finally accepted, and the decision of the said commissioner, which shall be conclusive, as to the acceptance of said highway or portion thereof thus constructed or improved, shall be entered in the form of an executive order, a certified copy of which shall be filed with the secretary of agriculture.

§ 166. The provisions of article six of this chapter relative to the acquisition of lands for right of way and other purposes shall be applicable for the purposes of highways improved or constructed under the provisions of this article.

§ 167. The proportion of the total cost of the improvement or construction of highways to be borne by the state of New York under the provisions of this article, exclusive of the expenses incurred prior to the beginning of construction work for the purposes of making surveys, plans, specifications and estimates of cost, shall not exceed fifty per centum of such total cost.

§ 168. The state commissioner of highways is hereby authorized, empowered and directed to perform and do such other and further acts not hereby specifically provided in this article as may be necessary to conduct the improvement or construction of co-operative highways with state and federal aid in compliance with the act of congress hereinbefore referred to and the rules and regulations promulgated by the secretary of agriculture under authority conferred upon him by said act of congress, the provisions of which act are hereby assented to, the good faith of the state of New York being hereby pledged to make such provision from time to time as may be necessary to provide its share of the cost of the improvement of such highways.

Whole of Article VI-A added by L. 1917, ch. 462.

## ARTICLE VII.

**Maintenance of State and County Highways.**

**Section 170.** Commission to provide for maintenance and repair.

- 170-a. State to maintain roads improved by state appropriation under special laws.
- 170-b. Maintenance and repair by the state of certain improved roads.
- 170-c. Maintenance by the state of canal bridge approaches.
- 171. Appropriations by state; apportionment of moneys.
- 172. Cost to town for maintenance of state and county highways.
- 172-a. Saving clause; temporary provisions.
- 173. Disbursement of maintenance funds.
- 174. Reports of county treasurer.
- 175. Compensation of town superintendents.
- 176. Liability of state for damages.
- 177. Additional width or different type of construction under repair contracts.
- 178. Repealed.
- 179. Sprinkling; removal of filth and refuse.
- 180. Payment by counties of a portion of the cost of construction under repair contracts.

§ 170. Commission to provide for maintenance and repair. The maintenance and repair of improved state and county highways in towns and incorporated villages, exclusive, however, of the cost of maintaining and repairing bridges having a span of five feet or over, shall be under the direct supervision and control of the commissioner of highways and he shall be responsible therefor. Such maintenance and repair may be done in the discretion of the commissioner either directly by the department of highway or by contract awarded to the lowest responsible bidder at a public letting after due advertisement, and under such rules and regulations as the commissioner of highways may prescribe. The commissioner of highways shall also have the power to adopt such system as may seem expedient so that each section of such highways, shall be under constant observation, and be effectively and economically preserved, maintained and repaired. The commissioner of highways shall have the power to purchase materials for such maintenance and repairs, except where such work is done by contract, and contract for the delivery thereof at convenient intervals along such highways.

Amended by L. 1911, ch. 646; L. 1912, ch. 83; L. 1913, ch. 80. and L. 1916, ch. 578.

§ 170-a. **State to maintain roads improved by state appropriations under special laws.** When any highway has been constructed or improved under a special law, with moneys taken from the state treasury and under plans prepared by a state department, the commissioner of highways may at any time inspect such highway and if he determine it to be of sufficient importance and properly constructed, he may make an order directing that such highway become a part of the system of state and county highways in such county, and thereafter such highway shall be maintained as a state or county highway in the manner provided in article seven of the highway law. Such order shall be served upon the chairman of the board of supervisors, and a certified copy thereof shall be filed in the office of the county clerk and one in the office of the state comptroller.

Added by L. 1917, ch. 261.

§ 170-b. **Maintenance and repair by the state of certain improved roads.** Whenever a county shall have constructed therein, at its expense, an improved stone road for a distance of not exceeding two miles, extending between two points, each on the dividing line between such county and an adjoining county, and connecting at both points with a county highway in such adjoining county, commissioner of highways may at any time inspect such road and if he deems it to be of sufficient importance and properly constructed, he may determine that such road shall be thereafter maintained and kept in repair by the state; in which case, such maintenance and repair shall be under the supervision of such commissioner. Such determination shall be in the form of an order and shall be served upon the chairman of the board of supervisors of the county in which the road is located that is to be maintained by the state, and a certified copy thereof shall be filed in the office of the county clerk and one in the office of the state comptroller.

Added by L. 1918, ch. 146.

§ 170-c. **Maintenance by state of canal bridge approaches.** Where a waterway which is a part of the canal system of the state intersects a state or county highway which is maintained adjacent to such intersection pursuant to this article, the pavement and shoulders of the approaches to the bridge structure carrying such highway across such waterway shall be considered eligible for maintenance under this article, providing such approach has, in

the opinion of the state commissioner of highways, been properly graded in connection with the construction of the canal system of the state. The state commissioner of highways may at any time make an order directing that such section of highway become a part of the system of state or county highways in such county, and thereafter the pavement and shoulders of such approach shall be maintained as a state or county highway in the manner provided in article seven of this chapter. Such order shall be served upon the chairman of the board of supervisors and a certified copy thereof shall be filed in the office of the county clerk and one in the office of the state comptroller. In maintaining such section of highway the commission may lay such type of pavement as in his opinion is advisable.

Added by L. 1918, ch. 324.

**§ 171. Appropriations by state; apportionment of moneys.** There shall be annually appropriated for the maintenance and repair of improved state and county highways an amount sufficient to provide therefor, based upon the estimates prepared and submitted by the commission to the legislature as provided in section twenty-three of this chapter. Not less than ninety per centum of the amount so appropriated shall be apportioned by the commission each year among the counties in accordance with the proportion which the amount to be apportioned bears to the total amount of such estimates. The comptroller, upon the requisition of the commission, shall draw his warrant upon the state treasurer in favor of the county treasurer of the county in which the improved state or county highways are located, for an amount which shall not be in excess of the total amount apportioned by the commission to such county. The moneys so paid shall be deposited by the county treasurer to the credit of the fund for the maintenance of improved state and county highways in the county. Any moneys so deposited and placed to the credit of the fund for such maintenance shall be available and subject to the order of the state highway commission at any time prior to the total expenditure thereof. Not more than ten per centum of the amount so appropriated each year may be reserved by the commission for the repair or rebuilding of improved state or county highways, which ten per centum shall not be deemed to be available until after the moneys paid the county treasurer of a county as heretofore provided shall have been expended, and which shall be paid by the state treasurer upon the warrant of the comptroller drawn

upon the requisition of the commission issued when required for such purposes.

Amended by L. 1912, ch. 83 and L. 1916, ch. 578.

§ 172. **Cost to town for maintenance of state and county highways.** Each town shall pay for the maintenance and repair of state and county highways each year the sum of fifty dollars for each mile or major fraction of a mile of the total mileage of state and county highways within the town, each incorporated village shall pay for such maintenance and repair at the rate of one and one-half cents for each square yard of surface of such improved highway maintained by the state within its corporate limits; except where a maintenance bond for a period of five years satisfactory in form and sufficiency to the commission shall have been given to the village prior to January first, nineteen hundred and sixteen, such tax herein provided for shall not be levied or paid until the period covered by such maintenance bonds shall have expired, or shall have failed in sufficiency.

On or before the first day of November in each year the commission shall transmit to the clerk of the board of supervisors of each county and to the board of trustees of each village a statement specifying the number of miles of improved state and county highways in each town, the number of square yards of surface of such improved highway as hereinbefore provided in each village in such county and the amount which each of such towns and villages is required to pay into the county treasury on account of the maintenance of state and county highways and a copy of such statements shall be forwarded to the county treasurer. The board of supervisors of the county and the board of trustees of an incorporated village shall cause the amount to be paid by each town and incorporated village of the county, to be assessed, levied and collected therein in the same manner as other town and village charges, in the several towns and villages and such amount when collected shall be paid into the county treasury to the credit of the fund for the maintenance of state and county highways in the several towns and incorporated villages of the county.

Amended by L. 1912, ch. 83, L. 1915, ch. 551, L. 1916, ch. 578 and L. 1917, ch. 124.

§ 172-a. **Saving clause; temporary provisions.** Whenever any city has deposited certain moneys with a county treasurer for the maintenance of streets within such city in accordance with the

provisions of section one hundred and seventy-two of this chapter as it existed prior to April first, nineteen hundred and sixteen, and there remains an unexpended balance of such moneys in the hands of the county treasurer, such unexpended balance shall, when such section as hereby amended takes effect, revert to such city and the county treasurer is hereby authorized, empowered and directed to return such unexpended balance to the treasurer of such city. The moneys returned by a county treasurer to a city in accordance with the provisions of this section shall be expended by the city in the maintenance and repair of the streets within such city which have been constructed or improved by state aid. The highway commission shall retain jurisdiction and authority over any city street heretofore improved as a state or county highway, until the expiration of the period of time covered by the bond guaranteeing the maintenance and repair of such street, and may take such proceedings as may be necessary to enforce the provisions of such guaranty bond and in case of the failure of the contractor or the surety company on the bond to perform such work as may be lawfully required of them, the highway commission is authorized to perform such work in the first instance, charging the expense incurred thereby to the contractor and the surety company in a manner provided by the contract and bond. Upon the termination of the guaranty period covered by such bond, the highway commission shall notify the city clerk thereof and upon service of such notice the authority and responsibility of the state over such street shall cease and thereafter such street shall be maintained in the manner provided by law for the maintenance and repair of city streets.

Added by L. 1916, ch. 578 and amended by L. 1917, ch. 261.

§ 173. **Disbursement of maintenance funds.** The amount apportioned by the commission for the maintenance and repair of state and county highways in each county shall be expended for the repair and maintenance of such highways in such county, but the amount paid by each town or incorporated village as provided by section one hundred and seventy-two shall be expended for the repair and maintenance of such highways in such town or incorporated village. The county treasurer shall pay out the moneys received by him as provided in this article upon the written order of the representative of the commission, who, before drawing any such orders shall give a

bond in an amount to be specified by the commission, and with such sureties as shall be approved by the commission; such bond shall be filed in the office of the state comptroller and certified copy thereof filed in the office of the state highway commission and in the office of the county treasurer. Such orders shall be issued upon vouchers duly presented to the representative of the commission in the form to be prescribed by it. The commission may adopt rules and regulations providing for the presentation and payment of accounts for maintenance and repair.

Amended by L. 1912, ch. 83 and L. 1916, ch. 578.

**§ 174. Reports of county treasurer.** The county treasurer shall report to the commission annually and at such other times as required by the commission, the amount received by him on account of the maintenance and repair of improved state and county highways in the several towns and incorporated villages in his county and the expenditures made by him out of such moneys. The form and contents of such report shall be prescribed by the commission.

Amended by L. 1912, ch. 83 and L. 1916, ch. 578.

**§ 175. Compensation of town superintendents.** If a town superintendent shall be directed by the commission to perform services in respect to the maintenance and repair of improved state and county highways within his town his compensation therefor shall be paid out of the moneys set apart as provided in this article for such maintenance and repair. Such compensation shall be fixed by the commission but shall in no case exceed the amount fixed by the town board as compensation for his services performed for the town under this chapter, and in rendering his monthly bill to the supervisor, and his annual bill to the town board, no charge shall be made against the town for an expense or per diem charge upon any date for which an audit shall have been allowed by the state commission. And said state commission shall make proper rules and regulations to carry into effect this provision and to furnish to the town board prior to the annual audit day due information as to the dates, compensation and expenses allowed by them to said town superintendent from the state repair fund.

Amended by L. 1912, ch. 83.

**§ 176. Liability of state for damages.** The state shall not be liable for damages suffered by any person from defects in state and county highways, except such highways as are maintained by the state by the patrol system, but the liability for such damages shall otherwise remain as now provided by law, notwithstanding the construction or improvement and maintenance of such highways by the state under this chapter; but nothing herein contained shall be construed to impose on the state any liability for defects in bridges over which the state has no control. Within the limits of incorporated villages the state shall maintain a width of pavement equal to the width of pavement constructed or improved at the expense of the state, if a state highway, or of the state and county, if a county highway, the location of the state's portion of such roadway within said incorporated limits to be determined by the center line of the roadway as shown on the plans on file with the state highway department, and the state shall be liable for damages to persons or property only when such damage shall occur as a result of the defective condition of the portion of improved highway as above described.

Amended by L. 1910, ch. 570; L. 1912, ch. 83 and L. 1916, ch. 578.

**§ 177. Additional width or different type of construction under repair contracts.** Whenever in the maintenance and repair of state and county highways the commission shall have determined upon the necessity of resurfacing such highway, the town or village wherein the highway is located may petition the commission to provide an additional width or a different type of pavement, or both, in the plans providing for such resurfacing. The additional expense of such widening or different type of construction shall be borne wholly by such town or village and the provisions of sections one hundred and thirty-seven and one hundred and thirty-eight-a shall apply to such additional width or different type of construction under such repair contract in the same manner as under a construction contract as provided in those sections.

Added by L. 1916, ch. 578.

**§ 178. (Repealed by L. 1916, ch. 459.)**

**§ 179. Sprinkling; removal of filth and refuse.** Upon petition signed by a majority of the taxpayers owning property abutting upon an improved state or county highway and filed with the town clerk, the town board may set aside any section of such

highway outside of a village and contract for the sprinkling of the roadbed with water and also contract for the removal of filth and refuse therefrom. No such contract shall be entered into unless previously approved by the county superintendent. The amount of any such contract so entered into shall be assessed upon the property abutting upon such section in the proportion which the frontage of each parcel thereof bears to the length of the section exclusive of intersecting highways. Such assessment shall be made, levied and collected in the same general manner, and at the same time and by the same officers as the town taxes of said town are assessed, levied and collected.

§ 180. **Payment by counties of a portion of the cost of construction under repair contracts.** Whenever in the maintenance and repair of state and county highways under the provisions of article seven of this chapter, the commission shall have determined upon the necessity of resurfacing, reconstructing or repairing such highway, the county wherein the highway is located may by resolution provide that not to exceed thirty-five per centum of the estimated cost of such resurfacing, reconstructing or repairing shall be borne by the county. The provisions of sections one hundred and twenty-five, one hundred and twenty-six, one hundred and twenty-seven, one hundred and twenty-eight, one hundred and thirty, one hundred and thirty-two, one hundred and thirty-four, one hundred and thirty-five, one hundred and thirty-six, one hundred and thirty-seven, one hundred and thirty-nine, one hundred and forty-one, one hundred and forty-one-a, one hundred and forty-two, one hundred and forty-two-a, one hundred and forty-eight, one hundred and forty-nine, one hundred and forty-nine-a, one hundred and fifty, one hundred and fifty-one, one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five and one hundred and fifty-six of this chapter shall apply to such resurfacing, reconstructing and repairing of state and county highways in the same manner as to the original construction thereof in so far as the same may be applicable thereto.

Added by L. 1917, ch. 91.

## ARTICLE VIII.

**Laying Out, Altering and Discontinuing Highways;  
Private Roads**

**Section 190.** Survey for the laying out of a highway.

191. Highways by dedication.

192. Application.

193. Application for condemnation commissioners.

194. Appointment of condemnation commissioners and their duties.

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- 235. Highways in lands acquired by the United States for fortification purposes deemed abandoned.
- 236. Discontinuance of highway.
- 237. Description to be recorded.
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§ 190. **Survey for the laying out of a highway.** Whenever the town superintendent shall lay out any highway, either upon application to him or otherwise, he shall notify the district or county superintendent, whose duty it shall be to either make a survey, or cause the same to be made, and the town superintendent shall incorporate the survey in an order to be signed by him, and to be filed and recorded in the office of the town clerk, who shall note the time of recording the same.

§ 191. **Highways by dedication.** Whenever land is dedicated to a town for highway purposes therein, the town superintendent may with the consent of the town board, either with or without a written application therefor, and without expense to the town, make an order laying out such highway, upon filing and recording in the town clerk's office with such order a release of the land from the owner thereof. A highway so laid out must not be less than two rods in width, except that where such highway is located on a sand beach separated by more than two miles of water from the main body of the town of which it forms a part and is not an extension or continuation of a public highway already in use and has erected thereon a board walk not less than one-third the width of said highway, such highway so laid out may be less than two rods in width and must not be less than ten feet in width. Section two hundred does not apply to a highway by dedication. Such town superintendent may also, upon written application and with the written consent of the town board, make an order laying out or altering a highway, or discontinuing a highway, which has become useless since it was laid out, upon filing and recording in the town clerk's office, with such application, consent and order, a release from all damages from the owners of lands taken or affected thereby, when the consideration for such release, as agreed upon between such town superintendent, and owner or owners, shall not in any one case, from any one claimant, exceed one hundred dollars, and from all claimants five hundred dollars. A

order of the town superintendent, as herein provided, shall be final.

Amended by L. 1915, ch. 322.

**§ 192. Application.** Any person or corporation assessable for highway taxes may make written application to the town superintendent of the town in which he or it shall reside, or is assessable, to alter or discontinue a highway, or to lay out a new highway.

Amended by L. 1913, ch. 472, and L. 1919, ch. 195.

**§ 193. Application for condemnation commissioners.** Whenever the land is not dedicated to the town for highway purposes, and not released as herein provided, the applicant shall, within thirty days after presenting the application to the town superintendent, and after at least five days' notice to said town superintendent of the time and place of the application to the county court, in this section provided for, by verified petition showing the applicant's right to so present the same, and that such application has been in good faith presented, and if the county judge require on such notice to such parties interested as he shall direct, apply to the county court of the county where such highway shall be, for the appointment of three commissioners to determine upon the necessity of such highway proposed to be laid out or altered, or to the uselessness of the highway proposed to be discontinued and to assess the damages by reason of laying out, opening, altering or discontinuing such highway. Such application shall be accompanied by the written undertaking of the applicant executed by one or more sureties, approved by the county judge, to the effect that if the commissioners appointed determine that the proposed highway or alteration is not necessary or that the highway proposed to be discontinued is not useless, the sureties will pay to the commissioners their compensation at the rate of four dollars for each day necessarily spent and all costs and expenses necessarily incurred in the performance of their duties, which amount shall not exceed the sum of one hundred dollars. Whenever the town superintendent of highways of any township shall determine that public necessity requires the laying out of a new or additional highway, and the land therefor cannot be obtained by the dedication of the owners thereof, he may apply to the town board of his town for permission to institute a proceeding to ac-

quire so much land as may be necessary to lay out such new or additional highway, and when such consent shall have been given by the town board of such town, the said town superintendent of highways may apply to the county court of the county in which such proposed highway is situated, for the appointment of commissioners in like manner as is provided by this section where such application is made by any person or corporation assessable for highway taxes, except that when such application shall be made by the town superintendent of highways, that at least five days' notice of the time and place of the application shall be given to the owners of the lands sought to be acquired, providing such owners can be ascertained by such town superintendent, or if the owners thereof are not known to the town superintendent, by the serving of a copy of the notice of such application upon the occupants of said premises. When such application is made by the town superintendent of highways, no undertaking shall be required of the applicant.

Amended by L. 1910, ch. 344.

§ 194. **Appointment of condemnation commissioners, and their duties.** Upon the presentation of such petition, the county court must appoint three disinterested freeholders, who shall not be named by any person interested in the proceedings, who shall be residents of the county, but not of the town wherein the highway is located, and who shall not be related by consanguinity or affinity within the sixth degree to the applicant or to any person interested in the proceeding or to the owner of any lands to be taken or affected by the laying out, alteration or discontinuance of a highway, as commissioners to determine the questions mentioned in the last section. They shall take the constitutional oath of office, and appoint a time and place at which they shall all meet to hear the town superintendent and supervisor of the town where such highway is situated, and others interested therein. They shall personally examine the highway described in the application, hear any reasons that may be offered for or against the laying out, altering or discontinuing of the highway, and assess all damages by reason thereof. They may adjourn the proceedings before them from time to time, issue subpoenas and administer oaths in such proceedings, and they shall keep minutes of their proceedings, and shall reduce to writing all oral evidence given before them upon the subject of the assessment of damages. They shall make duplicate certificates of their decision, and shall

file one in the town clerk's office of the town, and the other, with such minutes and evidence, in the county clerk's office of the county in which the highway or proposed highway is located.

**§ 195. Notice of meeting.** The applicant shall cause, at least eight days previous, written or printed notice to be posted up in not less than three public places in the town specifying, as near as may be, the highway proposed to be laid out, altered or discontinued, the tracts or parcels of land through which it runs, and the time and place of the meeting of the commissioners appointed by the county court to examine the highway as mentioned in the last section. Such notice shall also, in like time, be personally served on the owner and occupant of the land, if they reside in the town, or by leaving the same at their residence with a person of mature age; if they do not reside in the same town, or service can not be made, a copy of such notice shall be mailed to such owner and occupant, if their post-office address is known to the applicant or ascertainable by him upon reasonable inquiry. If the highway proposed to be laid out shall cross a railroad the applicant shall also cause notice of the time and place of the meeting of the commissioners to be given to the railroad company as required by section ninety of the railroad law.

Amended by L. 1912, ch. 246.

**§ 196. Decision of condemnation commissioners in favor of application.** If a majority of the commissioners appointed by the county court shall determine that the highway or alteration applied for is necessary, or that the highway proposed to be discontinued is useless, they shall assess all damages which may be required to be assessed by reason thereof and make duplicate certificates to that effect. If the petition is for the laying out of a highway, the commissioners shall also include in their certificates what the probable cost would be of laying out and completing the proposed highway, in their opinion, based upon the evidence given before them on the hearings.

**§ 197. Damages in certain cases; how estimated.** The owner of lands within the bounds of a highway discontinued may enclose the same and have the exclusive use thereof, and the benefits resulting therefrom may be deducted in the assessment of damages caused by the laying out of a highway through his other lands in place of the discontinued highway.

§ 198. **Decision of condemnation commissioners denying application.** If a majority of the commissioners appointed by the county court shall determine that the proposed highway or alteration is not necessary, or that the highway proposed to be discontinued is not useless, they shall make duplicate certificates to that effect. The costs and expenses necessarily incurred by such commissioners in the proceedings shall be indorsed upon such duplicate certificates, and upon a confirmation of such decision and of the amount of such costs and expenses by the county court, such costs and expenses not exceeding one hundred dollars shall be payable by the applicants.

§ 199. **Motion to confirm, vacate or modify.** Within thirty days after the decision of the commissioners shall have been filed in the town clerk's office, any person interested in the proceeding may apply to the court appointing the commissioners for an order confirming, vacating or modifying their decision, and such court may confirm, vacate or modify such decision. If the decision be vacated, the court may order another hearing of the matter before the same or other commissioners. If no such motion is made, the decision of the commissioners shall be deemed final. Such motion shall be brought on upon the service of papers upon adverse parties in the proceeding, according to the usual practice of the court in actions and special proceedings, pending therein; and the decision of the county court shall be final, excepting that a new hearing may be ordered as herein provided, and excepting that any such decision may be reviewed on appeal upon questions affecting jurisdiction, and rulings and exceptions made and taken upon the hearing before the commissioners. If the final decision be adverse to the applicant, no other application for laying out, altering or discontinuing the same highway shall be made within two years.

§ 200. **Limitations upon laying out highways.** No highways shall be laid out less than three rods in width, nor through an orchard of the growth of four years or more, or any garden cultivated as such for four years or more, or grape vineyards of one or more years' growth, and used in good faith for vineyard purposes, or buildings or any fixtures or erections for the purposes of trade or manufactures, or any yard or enclosure necessary to the use and enjoyment thereof, without the consent of the owner or owners thereof, unless so ordered by the county court of the county in which the proposed highway is situated; such order shall be made

on the certificate of the town superintendent of the town or towns in which the proposed highway is situated, showing that the public interest will be greatly promoted by the laying out and opening of such highway, and that commissioners appointed by the court have certified that it is necessary; a copy of the certificate with eight days' notice of the time and place of the hearing before the county court shall be served on the owners of the land, or if they are not residents of the county upon the occupants; the county court upon such certificates, and the proofs and other proceedings therein, may order the highway to be laid out and opened, if it deems it necessary and proper. The town superintendent shall then present the order of the county court, with the certificate and proofs upon which it was granted, certified by such court, to the appellate division of the supreme court in the judicial department in which the land is situated upon the usual notice of motion, served upon the owner or occupant, or the attorney who appeared for them in the county court. If such appellate division of the supreme court shall confirm the order of the county court, the town superintendent shall then lay out and open such highway as in other cases. The provisions of this section shall not apply to vineyards planted or to buildings, fixtures, erections, yards or enclosures made or placed on such land after an application for the laying out and opening the highway shall have been made. In case the highway to be laid out shall constitute an extension or continuation of a public highway already in use, and shall not, as to such new portion, exceed half a mile in length, the town superintendent may lay out such extension or continuation of a width of not less than three rods, provided, however, that it be not less than the widest part of the highway of which it is an extension or continuation. In such case the town superintendent shall specify in his certificate the precise width of the new portion of such highway, and shall certify that such width is as great at least as the widest part of the highway of which it is a continuation or extension. No highway shall be laid out which shall be identical or substantially so with a highway previously discontinued or abandoned for public purposes within seven years of such discontinuance or abandonment, nor where other land or property has been conveyed to the town at the time of such discontinuance or abandonment in counties adjoining cities with upward of one million inhabitants.

Amended by L. 1911, ch. 624.

§ 201. **Laying out highways through burying-grounds.** No private road or highway shall be laid out or constructed upon or through any burying-ground, unless the remains therein contained are first carefully removed, and properly reinterred in some other burying-ground, at the expense of the persons desiring such road or highway, and pursuant to an order of the county court of the county in which the same is situated, obtained upon notice to such persons as the court may direct.

§ 202. **Costs; by whom paid.** In all cases of assessments of damages by commissioners appointed by the county court, the costs thereof shall be paid by the town thereof, except that when reassessment of damages shall be had on the application of the party for whom the damages were assessed, and such damages shall not be increased on such reassessment, the costs shall be paid by the party applying for the reassessment; and when application shall be made by two or more persons for the reassessment of damages, all persons who may be liable for costs under this section shall be liable in proportion to the amount of damages respectively assessed to the first assessment, and may be recovered by action in favor of any person entitled to the same. Each commissioner appointed by the court, for each day necessarily employed as such, shall be entitled to four dollars and his necessary expenses.

§ 203. **Damages assessed, and costs to be audited.** All damages to be agreed upon, or which may be finally assessed, and costs against the town, as herein provided, shall be laid before the board of town auditors, or in towns not having a board of town auditors, before the town board, to be audited with the charges of the commissioners, justices, surveyors or other persons or officers employed in making the assessment, and for whose services the town shall be liable, and the amount shall be placed upon the town abstract and levied and collected in the town in which the highway is situated, and the money so collected shall be paid to the supervisor of such town, who shall pay to the owner the sum assessed to him, and appropriate the residue to satisfy the charges aforesaid. If the whole amount of damages and costs to be paid by the town be less than five hundred dollars, the town board may borrow the amount thereof, in anticipation of taxes, levied or to be levied therefor, at a rate of interest not exceeding the legal rate.

Amended by L. 1911, ch. 498.

**§ 204. When officers of different towns disagree about highway.**

When the town superintendent of any town or officers of any village or city having the powers of town superintendents shall differ with the town superintendent or superintendents of any other town or with the officers of such a village or city having the powers of town superintendents in the same county, relating to the laying out of a new highway or altering an old highway, extending into both towns, or a town and a village or city, or upon the boundary line between such towns or such town and a village or city, or when the town superintendent of a town in one county shall differ with the town superintendent of a town or the officers of a village or city having the powers of town superintendents in another county, relating to the laying out of a new highway, or the altering of the old highway, which shall extend into both counties, or be upon the boundary line between such counties, the town superintendents of both towns or the officers of the village or city having such powers shall meet on a five days' written notice, specifying the time and place, within some one of such towns, villages or cities, given by either of such town superintendents, or officers having powers of town superintendents, to make their determination in writing, upon the subject of their differences. If they cannot agree, they or either of them may certify the fact of their disagreement to the county court of that county, if the proposed highway is all in one county, or if in different counties, or if the county judge is disqualified or unable to act, to the supreme court; such court shall thereupon appoint three commissioners, freeholders of the county, not residents of the same town, village or city, where the highway is located; or if between two counties, then freeholders of another county, who shall take the constitutional oath of office, and upon due notice to all persons interested view the proposed highway, or proposed alteration of a highway, administer all necessary oaths, and take such evidence as they deem proper, and shall decide all questions that shall arise on the hearing, as to the laying out or altering of such highway, its location, width, grade and character of roadbed, or any point that may arise relating thereto; and if they decide to open or alter any highway, they shall ascertain and appraise the damages, if any, to the individual owners and occupants of the land through which such new or altered highway is proposed to pass, and shall report such evidence and decision to such court, with their assessment of damages, if any, with all convenient speed.

On the coming in of such report, the court may, by order, confirm, modify or set aside the report in whole or in part and may order a new appraisal by the same or by other commissioners, and shall decide all questions that may arise before it. And all orders and decisions in the matter shall be filed in the county clerk's office of each county where the highway is located, and shall be duly recorded therein. This section shall not be so construed as to compel any town or towns to construct, repair or maintain a bridge upon a boundary between towns, where previous to May seventh, nineteen hundred and three, an application had been made to any court, to compel the construction, repair and maintenance of a bridge upon such a boundary line, and such application had been denied.

§ 205. Difference about improvements. When the town superintendent or the officers of a village or city having the powers of town superintendents therein, shall desire to make a new or altered highway extending beyond the bounds of such town, village or city, a better highway than is usually made for a common highway, with a special grade or roadbed, drainage or improved plan, and are willing to bear the whole or a part of the expense thereof beyond such bounds, but cannot agree in regard to the same, upon written application of either of the superintendents or officers and notice to all parties interested, such court shall make an equitable adjustment of the matters, and may direct that in consideration of the payment of such portion of the additional expense by the town, village or city that desires the improved and better highway, as shall be equitable, its officers, contractors, servants and agents may go into such town, village or city, and make the grade and roadbed, and do whatever may be necessary and proper for the completion of such better highway, advancing the money to do it; the amount of damages to each owner or occupant shall be ascertained and determined by commissioners, who shall be appointed, and whose proceedings shall be conducted in the manner provided by the last preceding section; and upon the coming in of their report of damages, and of the expenses paid, such court shall, on notice to all parties interested, direct that the amount of damages assessed each owner or occupant, if any, and all such expenses be paid by each, any or all of such towns, villages or cities as shall be just and equitable, and the damages and expenses assessed and allowed, as in this and the last preceding sections, shall be paid and collected as if fixed by the town superintendents of the towns,

or the officers of such villages or cities having the powers of such superintendents. Every commissioner appointed as herein provided shall be paid six dollars for each day actually and necessarily employed in such service and necessary expenses.

§ 206. **Highway in two or more towns.** When application is made to lay out, alter or discontinue a highway located in two or more towns, all notices or proceedings required to be served upon the town superintendents shall be served upon the town superintendent of each town; and the commissioners appointed by the court shall determine the amount of damages to be paid by each town, and when the towns are in different counties, the application for the appointment of commissioners shall be made to a special term of the supreme court held in the district where the highway or some part of it is located; and the same proceedings shall thereafter be had in the supreme court of such district as are authorized by this chapter to be had in the county court.

§ 207. **Laying out, dividing and maintaining highway upon town line.** An application to lay out a highway upon the line between two or more towns shall be made to the town superintendents of each town, who shall act together in the matter; and, upon laying out any such highway, the expense of opening, working and keeping the same in repair shall be borne equally by such towns. The town superintendents shall cause a map and survey of the highway to be recorded in the office of the town clerk in each of the respective towns. If such highway be upon a line between one or more towns and a city or incorporated village, such application shall also be made to the officers of such city or village having the powers of the town superintendents and such officers may agree with the town superintendents of such towns as to division of such expense. Whenever such officers shall disagree, the question shall be submitted to the district or county superintendent or superintendents representing the county or counties, district or districts in which such highway is located and their decision shall be final when approved by the state commission. All highways heretofore laid out upon the line between any two towns or between a town and a city or an incorporated village shall be divided and allotted or redivided and re-allotted, recorded and kept in repair in the manner above directed; and all bridges upon such highways shall be built and main-

tained jointly by the towns whether wholly located within one of them or otherwise.

§ 208. **Final determination, how carried out.** The final determination of commissioners appointed by any court, relating to laying out, altering or discontinuing a highway, and all orders and other papers filed or entered in the proceedings, or certified copies thereof from the court where such determination, order and papers are filed and entered, shall be forthwith filed and recorded in the town clerk's office of the town where the highway is located; and every such decision shall be carried out by the town superintendent of the town, the same as if they had made an order to that effect. The said town superintendent shall thereupon proceed to construct the highway so laid out, and construct any alteration so provided for, and put same in good condition for public travel. The expense of such construction of such new highway or alteration of an existing highway, shall be a charge upon and against the town in which such highway is constructed or any existing highway is altered, and when same is completed the town board of such town may issue certificates of indebtedness for such expense, to draw interest at the rate of not to exceed five per centum per annum until paid, and shall at the next annual meeting for auditing accounts, after such work is done, and after such certificates may have been issued, audit such claims against the town, including interest, if any, and include same in the annual tax budget to be collected from the taxpayers of said town to pay said indebtedness; such money to be paid over to the supervisor of the town and by him paid and applied to the purposes aforesaid. This amendment is made subject to the provisions of section forty-eight, relating to contracts for construction.

Amended by L. 1913, ch. 318.

§ 209. **Highways by use.** All lands which shall have been used by the public as a highway for the period of twenty years or more, shall be a highway, with the same force and effect as if it had been duly laid out and recorded as a highway, and the town superintendent shall open all such highways to the width of at least two rods.

§ 210. **Fences to be removed.** Whenever a highway shall have been laid out through any inclosed, cultivated or improved lands, in conformity to the provisions of this chapter, the town superin-

tendent shall give to the owner or occupant of the land through which such highway shall have been laid, sixty days' notice in writing to remove his fences; and if such owner shall not remove his fences within sixty days, the town superintendent shall cause them to be removed, and shall direct the highway to be opened and worked.

§ 211. **Private road.** An application for a private road shall be made in writing to the town superintendent of the town in which it is to be located, specifying its width and location, courses and distances, and the names of the owners and occupants of the land through which it is proposed to be laid out.

§ 212. **Jury to determine necessity and assess damages.** The town superintendent to whom the application shall be made shall appoint as early a day as the convenience of the parties interested will allow, when, at a place designated in the town, a jury will be selected for the purpose of determining upon the necessity of such road, and to assess the damages by reason of the opening thereof.

§ 213. **Copy application and notice delivered to applicant.** Such town superintendent shall deliver to the applicant a copy of the application, to which shall be added a notice of the time and place appointed for the selection of the jury, addressed to the owners and occupants of the land.

§ 214. **Copy and notice to be served.** The applicant on receiving the copy and notice shall, on the same day, or the next day thereafter, excluding Sunday and holidays, cause such copy and notice to be served upon the persons to whom it is addressed, by delivering to each of them who reside in the same town a copy thereof, or in case of his absence, by leaving the same at his residence and upon such as reside elsewhere, by depositing in the postoffice a copy thereof to each, properly enclosed in an envelope, addressed to them respectively at their postoffice address, and paying the postage thereon, or, in case of infant owners, by like service upon their parent or guardian.

§ 215. **List of jurors.** At such time and place, on due proof of the service of the notice, the town superintendent shall present a list of the names of thirty-six resident freeholders of the town, in no wise of kin to the applicant, owner or occupant, or either of and not interested in such lands.

§ 216. **Names struck off.** The owners or occupants of the land may strike from the list not more than twelve names, and the applicant a like number; and of the number which remains, the twelve names standing first on the list shall be the jury.

§ 217. **Place of meeting.** The town superintendent shall then appoint some convenient time and place for the jury to meet, and shall summon them accordingly.

§ 218. **Jury to determine and assess damages.** The town superintendent and all the persons named and summoned on such jury, shall meet at the time and place appointed; but if one or more of the twelve jurors shall not appear, the town superintendent shall summon so many qualified to serve as such jurors as will be sufficient to make the number present twelve to forthwith appear and act as such; and when twelve shall have so appeared, they shall constitute the jury and shall be sworn well and truly to determine as to the necessity of the road, and to assess the damages by reason of the opening thereof.

§ 219. **Their verdict.** The jury shall view the premises, hear the allegations of the parties, and such witnesses as they may produce, and if they shall determine that the proposed road is necessary, they shall assess the damages to the person or persons through whose land it is to pass, and deliver their verdict in writing to the town superintendent.

§ 220. **Value of highway discontinued.** If the necessity of such private road has been occasioned by the alteration or discontinuance of a public highway running through the lands belonging to a person through whose lands the private road is proposed to be opened, the jury shall take into consideration the value of the highway so discontinued, and the benefit resulting to the person by reason of such discontinuance, and shall deduct the same from the damages assessed for the opening and laying out of such private road.

§ 221. **Papers to be recorded in the town clerk's office.** The town superintendent shall annex to such verdict the application, and their certificate that the road is laid out, and the same shall be filed and recorded in the town clerk's office.

§ 222. **Damages to be paid before opening the road.** The damages assessed by the jury shall be paid by the party for whose

benefit the road is laid out, before the road is opened or used; but if the jury shall certify that the necessity of such private road was occasioned by the alteration or discontinuance of a public highway, such damages shall be paid by the town and refunded to the applicant.

§ 223. **Fees of officers.** Every juror, in proceedings for a private road, shall be entitled to receive for his service one dollar and fifty cents; and town superintendents their per diem compensation to be paid by the applicant.

§ 224. **Motion to confirm, vacate or modify.** Within thirty days after the decision of the jury shall have been filed in the town clerk's office, the owner, occupant or applicant may apply to the county court wherein such private road is situated, for an order confirming, vacating or modifying their decision; and such court may confirm, vacate or modify such decision as it shall deem just and legal. If the decision is vacated, the court may order another hearing of the matter before another jury, and remit the proceedings to the town superintendent of the same town for that purpose. If no such motion is made, the decision of the jury shall be deemed final. The motion shall be brought on, upon the service of papers on the adverse party in the proceeding, according to the usual practice of the court in actions and special proceedings pending therein, and the decision of the county court shall be final, except that a new hearing may be had, as herein provided. If the final decision shall be adverse to the applicant, no other application for the same road shall be made within one year.

Amended by L. 1915, ch. 192.

§ 225. **Costs of new hearing.** If upon a new hearing, the damages assessed are increased, the applicant shall pay the costs and expenses thereof, otherwise the owner shall pay the same.

§ 226. **For what purpose private road may be used.** Every such private road, when so laid out, shall be for the use of such applicant, his heirs and assigns; but not to be converted to any other use or purpose than that of a road; nor shall the occupant or owner of the land through which said road shall be laid out be permitted to use the same as a road, unless he shall have signified such intention to the jury who assessed the damages for laying out such road, and before such damages were assessed.

§ 227. **Highways or roads along division lines.** Whenever a highway or private road shall be laid along the division line between lands of two or more persons, and wholly upon one side of the line, and the land upon both sides is cultivated or improved, the persons owning or occupying the lands adjoining such highway or road shall be paid for building and maintaining such additional fence as they may be required to build or maintain, by reason of the laying out and opening such highway or road; which damages shall be ascertained and determined in the same manner that other damages are ascertained and determined in the laying out of highways or private roads.

§ 228. **Adjournments.** If any accident shall prevent any of the proceedings required by this chapter relating to the laying out, altering or discontinuing of a highway, or the laying out of a private road, to be done on the day assigned, the proceedings may be adjourned to some other day, and the town superintendent shall publicly announce such adjournment.

§ 229. **Widening roads; petition.** When any part of a highway in any town of this state, not in an incorporated village or city, running between two or more villages or cities, has, because of the wearing away by a river or stream or any other natural cause, become narrower than the width required by statute, and is dangerous to the users of such highway, twelve or more resident taxpayers of such town may present a petition to the county court of the county within which such town is situated. The petition shall describe the part of the highway proposed to be widened and state that such highway has become lessened in width by the action of a river or stream or other cause, that it is dangerous to the traveling public, that the widening and improvement of such highway is necessary for the public convenience and welfare, that the highway is an important leading road between two or more cities or villages, that the cost of such widening and improvement would exceed the sum of two thousand five hundred dollars and would be too burdensome on the town or towns otherwise liable therefor. Such petition shall be verified by at least three of the petitioners. On receipt of the petition the county court shall forthwith appoint three commissioners who shall not be named by any person interested in the proceedings and who shall be taxpayers of such county, but who shall not reside in the town or towns in which the highway, proposed to be widened and improved, is situated.

§ 230. **Powers and duties of commissioners.** The commissioners shall take the constitutional oath of office and appoint a time and place for a meeting to hear all persons interested in the proposed widening of the highway. They shall personally examine the part of the highway proposed to be widened, hear any reasons for or against such widening and ascertain the probable cost of the work. They shall have power to issue subpoenas, administer oaths and examine witnesses; they shall keep the minutes of their proceedings and reduce to writing all oral evidence given before them. They shall make duplicate certificates of their decision, filing one in the town clerk's office of the town in which the said highway is located, and the other, with such minutes and evidence, in the county clerk's office of the county where the highway is located. Such commissioners shall have the same power as to the assessment of damages caused by the widening of such highway as commissioners appointed under this article for the discontinuance, alteration or laying out of a highway, and as to such assessment the same proceeding may be had for the confirmation, vacating or modifying of such decision, as provided in and by this article. The commissioners shall receive a compensation of five dollars for each day necessarily spent in the performance of their duties under this section, and the amount so paid to the said commissioners shall be a charge upon the town or towns in which the highway, proposed to be widened as aforesaid, is located.

§ 231. **Notice of decision to supervisors.** If a majority of the commissioners shall determine that the proposed widening of the highway is necessary and that the cost thereof would be too burdensome for the town, exceeding in probable cost two thousand five hundred dollars, they shall notify the board of supervisors of the county of such decision. The board of supervisors shall thereupon cause one-half of the amount of the estimated cost to be raised by the county and paid to the supervisor of the town or towns in which that part of the highway proposed to be widened as aforesaid is located, and said supervisor shall apply the sum so received by him towards the payment of the cost of such widening. The balance of the expense shall be raised in the manner provided by law, by the town or towns in which that part of the highway proposed to be widened as aforesaid is located.

§ 232. **Widening, how constructed.** The town superintendent shall construct such widening of the highway according to plans

and specifications adopted by the district or county superintendent and approved by the town board of his town. The bills and expenses incurred in such work shall be audited by the town board and paid by the supervisor upon written order of the town superintendent, after the same shall have been approved by the town board, out of moneys raised for such purpose as provided in the preceding section.

§ 233. **Actions to compel widening; how affected by petition.** In case an action might lie in any court of this state against the town superintendent of any town or towns to compel such superintendent to widen a part of a highway, the width of which has become less than that required by statute, or in case an action has been brought against such superintendent to compel him to widen a part of a highway, the width of which has become less than that required by statute, the presentation of a verified petition to the county court as provided for in section two hundred and twenty-nine shall prevent the commencing of any such action as aforesaid and cause such an action already commenced, to cease, and shall be a bar to a recovery on the part of the plaintiff of a judgment against such superintendent in any such action instituted or prosecuted to judgment after the passage of this chapter.

§ 234. **Highways abandoned.** Every highway that shall not have been opened and worked within six years from the time it shall have been dedicated to the use of the public, or laid out, shall cease to be a highway; but the period during which any action or proceeding shall have been, or shall be pending in regard to any such highway, shall form no part of such six years; and every highway that shall not have been traveled or used as a highway for six years, shall cease to be a highway, and every public right of way that shall not have been used for said period shall be deemed abandoned as a right of way. The town superintendent\* shall file, and cause to be recorded in the town clerk's office of the town a written description, signed by them, of each highway and public right of way so abandoned, and the same shall thereupon be discontinued. There may also be a qualified abandonment of a highway under the following conditions and for the following purposes, to wit: Where it appears to the town superintendents at any time, that a highway has not become wholly disused as aforesaid, but that it has not for two years next

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\* So in original.

previous thereto, been usually traveled along the greater part thereof, by more than two vehicles daily, in addition to pedestrians and persons on horseback, they shall file and cause to be recorded in the town clerk's office a certificate containing a description of that portion of the highway partly disused as aforesaid and declaring a qualified abandonment thereof. The effect of such qualified abandonment, with respect to the portion of said highway described in the certificate, shall be as follows: It shall no longer be worked at public expense; it shall not cease to be a highway for purposes of the public easement, by reason of such suspension of work thereon; no person shall impair its use as a highway nor obstruct it, except as hereinafter provided, but no person shall be required to keep any part of it in repair; wherever an owner or lessee of adjoining lands has the right to possession of other lands wholly or partly on the directly opposite side of the highway therefrom, he may construct and maintain across said highway a fence at each end of the area of highway which adjoins both of said opposite pieces of land, provided that each said cross fence must have a gate in the middle thereof at least ten feet in length, which gate must at all times be kept unlocked and supplied with a sufficient hasp or latch for keeping the same closed; all persons owning or using opposite lands, connected by such gates and fences, may use the portion of highway thus inclosed for pasturage; any traveler or other person who intentionally, or by wilful neglect, leaves such gate unlatched, shall be guilty of a misdemeanor, and the fact of leaving it unlatched shall be prima facie evidence of such intent or wilful neglect. Excepting as herein abrogated, all other general laws relating to highways shall apply to such partially abandoned highway. This section shall not apply to highways less than two rods in width unless it shall appear to the town superintendent at any time that such a highway has not, during the months of June to September inclusive of the two years next previous thereto, been usually traveled along the greater part thereof by more than ten pedestrians daily.

Amended by L. 1915, ch. 322.

**Modes of abandonment.** This section provides for abandonment of a highway, (1) where a highway has not been opened and worked within six years from the time it was dedicated to the public, or laid out by the town superintendent either with or without the proceedings provided for by this article; (2) where a highway has not been traveled or used as a highway for six years. Besides these two methods a highway may be discontinued and closed after proceedings had for such purpose as provided in this article.

§ 235. **Highways in lands acquired by the United States for fortification purposes deemed abandoned.** When land sought to be acquired by the United States of America for the purpose of fortifications includes a highway or portion thereof, the condemnation proceedings may include such highways or portion thereof, and the people of the state of New York, any municipality, county or other party claiming an interest therein may be made a party defendant in such proceeding, and the interest of the state, county, municipality or other claimant be determined, and the award made therefor. Forthwith upon the acquisition by the United States of America of land which includes a highway or portion thereof, there shall be filed in the office of the town clerk of the town, and also in the office of the county clerk of the county, in which such land is located, certified copies of the record or transfer to the United States of such land, together with a map of such land, on which map such highway or portion thereof shall be indicated by metes and bounds, and thereupon such highway or portion thereof shall be deemed discontinued and abandoned for highway purposes, and if proceedings have been taken, pursuant to article six of this chapter for the improvement of such highway by state aid, all such proceedings, together with any appropriation made for the improvement of such highway or portion thereof, as indicated on such map, shall be deemed revoked. vacated and set aside.

§ 236. **Discontinuance of highway.** Whenever the town superintendent of any town, in which during the past ten years there has been expended the sum of three hundred thousand dollars, or more, for the purpose of macadamizing the highways of such town, shall determine that any portion of any highway or street, not within the limits of an incorporated village, which is the terminus of such street or highway, is unnecessary for highway purposes, and said town superintendent may, by an order to be duly entered in the town clerk's office, direct such highway to be discontinued and abandoned for public purposes. Provided, however, that no portion of such highway to be discontinued shall be greater than one thousand feet of the terminus thereof and that the owners of the land on both sides of such highway or street, for the distance it is proposed to discontinue the same, shall, by written petition to such town superintendent have requested the discontinuance thereof.

§ 237. **Description to be recorded.** Immediately upon making and entering the order mentioned in section two hundred and thirty-six of this chapter, the said town superintendent shall cause a written description of that portion of the street or highway ordered to be discontinued to be filed and recorded in the office of the town clerk of the town in which the said street or highway is located, and when the same is duly recorded the said portion of the said street or highway shall thereupon be and become duly abandoned and discontinued for highway purposes.

§ 238. **Damages caused by discontinuance.** Any person or corporation interested as owner or otherwise, in any lands and claiming any loss or damage, legal or equitable, by reason of the discontinuance, abandonment or closing of any street or highway, not within the limits of an incorporated village, under or pursuant to the provisions of the last two sections, may, upon ten days' written notice to the town superintendent of the town in which such lands are situated apply to the supreme court or to the county court of the county within which such lands are situated for the appointment of commissioners to estimate and determine such loss and damage, whereupon the court shall appoint three disinterested commissioners of appraisal to estimate and determine such damage, and the amount of compensation to be paid by said town therefor, who shall make their report thereupon to such court, and which report when finally confirmed shall be final and conclusive in respect thereto, and the legality and equity of any and all such claims shall be determined by such commissioners and by the court upon the hearing of their report. Any loss or damage so estimated and determined shall be paid by said town as in case of judgment.

§ 239. **Papers, where filed.** All applications, certificates, appointments and other papers relating to the laying out, altering or discontinuing of any highway shall be filed by the town superintendent as soon as a decision shall have been made thereon in the town clerk's office of the town.

§ 240. **Costs of motion.** Costs of a motion to confirm, vacate or modify the report of commissioners appointed by the court to lay out, alter or discontinue a highway may be allowed in the discretion of the court not exceeding fifty dollars. On an uncontested motion to confirm the report of the commissioners so

appointed, if said report is favorable to the applicant and confirmed by the court, costs may be allowed not exceeding fifty dollars sufficient to compensate the applicant's attorney for his services in the proceedings. Costs of any other motion in a proceeding in a court of record, authorized by this chapter, may be allowed in the discretion of the court not exceeding ten dollars.

## ARTICLE IX.

### Bridges.

#### Section 250. When town or county expense.

- 251. Levy of tax upon county.
- 252. Penalty, and notice on bridge.
- 253. Offense.
- 254. Joint liabilities of towns and their joint contracts.
- 255. Refusal to repair.
- 256. Proceedings in court.
- 257. Supervisor to institute proceedings.
- 258. Duty of superintendents.
- 259. Report of town superintendents, and levy of tax.
- 260. Appeals.
- 261. Power of court on appeal.
- 262. Refusal to repair bridges.
- 262-a. Construction or improvement of bridge by county and town or towns.
- 263. Resolution of board of supervisors for abolition of toll bridges.
- 264. Investigation by the state commission of highways.
- 265. Acquisition by attorney-general.
- 266. Payment of expense of acquisition.
- 267. Maintenance of bridge.
- 268. Use of toll bridge by public service corporations; conditions; powers of town board.
- 269. Acquisition of certain toll bridges at the expense of the State.

§ 250. When town or county expense. The towns of this state, except as otherwise herein provided, shall be liable to pay the expenses for the construction and repair of its public or free bridges constructed over streams or other waters within their bounds, and their just and equitable share of such expenses when so constructed over streams or other waters upon their boundaries, except between the counties of Westchester and New York; and when such bridges are constructed over streams or other waters forming the boundary line of towns, either in the same or adjoining counties, such towns shall be jointly liable to pay such expenses. When such bridges are constructed over streams or other waters forming the boundary line between a city of the third

class and a town, such city and town shall be liable each to pay its just and equitable share of the expenses for the construction, maintenance and repair of such bridges. Except as otherwise provided by law, a city of the third class shall be deemed a town for the purposes of this article. Each of the counties of this state shall also be liable to pay for the construction, care, maintenance, preservation and repair of public bridges lawfully constructed over streams or other waters forming its boundary line, not less than one-sixth part of the expense of construction, care, maintenance, preservation and repair, and, except in a county containing a portion of the Adirondack park, the whole of such expenses of public bridges lawfully constructed or to be constructed over streams, or waterways, intersecting county roads.

Amended by L. 1914, chs. 78 and 199 and L. 1915, ch. 589.

#### COUNTY LAW.

§ 61. County highway and bridges. A board of supervisors shall, on the application of twenty-five resident taxpayers, when satisfied that it is for the interest of the county, lay out, open, alter or discontinue a county highway therein, or cause the same to be done, and construct, repair or abandon a county bridge therein, or cause the same to be done when the board shall deem the authority conferred on commissioners of highways insufficient for that purpose, or that the interests of the county will be promoted thereby. All expenses so incurred shall be a county charge. Such powers shall not be exercised unless the applicants therefor shall prove to the board the service of a written notice, personally or by mail, on a commissioner of highways of each town in the county, at least twelve days prior to the presentation of such application, specifying therein the object thereof; and when the application is to lay out a highway, or construct a bridge, the route or location thereof; and in all other cases a designation of the highway or bridge to be affected thereby. Whenever the board of supervisors of a county shall determine to construct a bridge in accordance with the foregoing provisions of this section, such board, on behalf of the county, and the town board of a town or in case of a city the board of aldermen or any similar board exercising the functions of aldermen, on behalf of such town or city, may enter into an agreement with the county, to the effect that such town or city will operate and maintain such bridge, in case the bridge is located wholly in a town or city. In case the bridge is constructed over a stream forming the boundary line between two towns or two cities or between a town and city, then they may agree with the county to operate and maintain such bridge jointly, in proportion to the assessed valuation of such town or city. The sum which the town or towns, city or cities are obliged to pay under such an agreement is a charge upon such towns or cities and shall be paid as other town or city charges are paid.

Amended by L. 1914, ch. 233.

§ 63. County aid to towns for the construction and repair of bridges. If the board of supervisors of any county shall deem any town in the county to be unreasonably burdened by its expenses for the construction and repair of its bridges, the board may cause a sum of money, not exceeding two thousand dollars in any one year, to be raised by the county and paid to such town to aid in defraying such expenses.

Section 121 of the Canal Law provides that "The Superintendent of Public Works is authorized and required to construct and hereafter maintain, at public expense, road and street bridges over the canals in all places where such bridges were constructed prior to the 20th day of April, 1839; if, in his opinion, the public convenience requires that they should be continued whether theretofore maintained at the expense of the State or of the towns, villages and cities where they are situate."

Section 126 of the Canal Law provides in part that "A street or road bridge should be constructed by the Superintendent of Public Works over a canal or feeder except upon such streets or roads as were laid out, worked or used previously to the construction of the canal or feeder by which said street or road was and is obstructed, and when bridges are constructed or reconstructed upon any such streets or roads, the cost to the State shall in no case be more than is required to preserve in a safe and substantial manner the continuity of such streets or roads so as not to unnecessarily impair their usefulness."

NOTE.—Sections 61, 62, 63 and 64, chapter 11, Consolidated Laws (County Law), provide that boards of supervisors may:

"Aid towns in building or repair to the amount of \$2,000, title remaining with the town.

"Reconstruct a town bridge which has been destroyed by the elements when such reconstruction would be too burdensome on the town, making the entire expense a county charge."

§ 251. Levy of tax upon county. Each supervisor shall present to the board of supervisors of his county at its annual session a statement specifying the amount paid during the preceding year ending on the thirty-first of October for the construction, care, maintenance, preservation and repair of public bridges over streams or other waters forming the boundary of such county. The board of supervisors shall levy upon the taxable property of the county a sum sufficient to pay its proportion of such expense, and the same when collected shall be paid to the supervisor of such town to be applied by him on the order of the town superintendent after audit as provided in this chapter, toward the payment of such expense.

§ 252. Penalty, and notice on bridge. The town superintendent may fix and prescribe a penalty, not less than one or more than

five dollars, for riding or driving faster than a walk on any bridge in his town whose chord is not less than twenty-five feet in length, and put up and maintain in a conspicuous place, at each end of the bridge, a notice in large characters, stating each penalty incurred.

§ 253. **Offense.** Whoever shall ride or drive faster than a walk over any bridge, upon which notice shall have been placed, and shall then be, shall forfeit for every offense, the amount fixed by such town superintendent, and specified in the notice.

§ 254. **Joint liabilities of towns and their joint contracts.** Whenever any two or more towns shall be liable to make or maintain any bridge or bridges, the same shall be built and maintained at the joint expense of such towns, without reference to town lines, except where the board of supervisors has otherwise apportioned such expense as provided in section ninety-seven. The town superintendents of all the towns, or of one or more of such towns, the others refusing to act, may, when directed by their respective town boards, enter into a joint contract for making and repairing such bridges.

§ 255. **Refusal to repair.** If the town board of either of such towns, after notice in writing from the town board of any other of such towns, given by the town clerk thereof, shall not within twenty days give their consent in writing to build or repair any such bridge, and shall not within a reasonable time thereafter direct, by resolution, the same to be done, the town board giving such notice may direct the town superintendent to make or repair such bridge, and then maintain an action in the name of the town, against the town which neglects or refuses to join in such making or repairing, and in such action, the plaintiffs shall be entitled to recover so much from the defendant, as the town would be liable to contribute to the same, together with costs and interest.

§ 256. **Proceedings in court.** Whenever any adjoining towns shall be liable to make or maintain any bridge over any streams dividing such towns, whether in the same or different counties, three freeholders in either of such towns may, by petition signed by them, apply to the town board in each of such towns, to build, rebuild or repair such bridges, and if such town boards refuse to build, rebuild or repair such bridge within a reasonable time,

either for want of funds or any other cause, such freeholders, upon affidavit and notice of motion, a copy of which shall be served on each supervisor at least eight days before the hearing, may apply to the supreme court at a special term thereof, to be held in the judicial district in which such bridge or any part thereof shall be located, for an order requiring such town boards to direct the town superintendents to build, rebuild or repair such bridge, and the court upon such motion may, in doubtful cases, refer the case to some disinterested person to ascertain the requisite facts in relation thereto, and to report the evidence thereof to the court. Upon the coming in of the report, in case of such reference, or upon or after the hearing of the motion, in case no reference shall be ordered, the court shall make an order thereon as the justice of the case shall require. If the motion be granted in whole or in part, whereby funds shall be needed to carry the order into effect, such court shall specify the amount of money required for that purpose, and how much thereof shall be raised in each town.

**§ 257. Supervisor to institute proceedings.** The supervisor of any such town shall, when directed by the town board, institute and prosecute proceedings under this chapter, in the name of the town, to compel the town board of such adjoining town or towns to cause the town superintendents thereof to join in the building, rebuilding or repair of any such bridge, in like manner as freeholders are thereby authorized.

**§ 258. Duty of superintendents.** The order for building, rebuilding or repairing a bridge being made, and a copy thereof being served on the town superintendent of such adjoining towns respectively the town superintendent of such towns shall forthwith meet and cause such bridge to be built, rebuilt or repaired in accordance with plans and specifications prepared or approved by the district or county superintendent, out of any funds in the hands of the supervisors of such towns applicable thereto; if an inadequate amount of such funds are on hand, the town boards of such towns shall direct the town superintendents thereof to build, rebuild or repair such bridge, and the same shall be done upon credit, or in part for cash or in part upon credit according to the exigency of the case; and such town boards shall direct the superintendents to enter into a contract, to be approved by such

town boards, for building, rebuilding or repairing such bridge pledging the credit of each town for the payment of its appropriate share so far as the same shall be upon credit.

§ 259. **Report of town superintendents, and levy of tax.** The town superintendent of each town shall make a full and verified report of their proceedings in the premises including an accurate account of what has been done in respect to such bridge, and shall attach thereto a copy of the order granted by the supreme court. Such report, account and order shall be certified by the town board and delivered to the supervisor and be presented by him to the board of supervisors of his county. The board of supervisors at their annual meeting shall levy a tax upon each of such towns, when in the same county, and upon the appropriate towns when in different counties, for its share of the costs of building, rebuilding and repairing such bridge, after deducting all payments actually made by the supervisor upon the written order of the town superintendent. Such tax, including all payments, shall in no case exceed the amount specified in the order of the supreme court.

§ 260. **Appeals.** Either party aggrieved by the granting or refusing to grant such order by the court at special term, may appeal from such decision to the appellate division of the supreme court for the review of the decision. The appellate division may alter, modify or reverse the order, with or without costs.

§ 261. **Power of court on appeal.** The special term may grant or refuse costs as upon a motion, including also witnesses' fees, referees' fees and disbursements. The appeal provided for in the last preceding section shall conform to the practice of the supreme court, in case of appeal from an order of a special term to the appellate division.

§ 262. **Refusal to repair bridges.** Whenever any such bridge shall have been or shall be so out of repair as to render it unsafe for travelers to pass over the same, or whenever any such bridge shall have fallen down, or been swept away by a freshet or otherwise, if the town superintendent of the adjoining town or towns, after reasonable notice of such condition of the bridge, have neglected or refused, or shall neglect or refuse to repair or rebuild it, then whatever funds have been or shall be necessarily

or reasonably laid out or expended in repairing such bridge or in rebuilding the same, by any person or corporation, shall be a charge on such adjoining town or towns, each being liable for its just proportion; and the person or corporation who has made such expenditure, or shall make such expenditures, may apply to the supreme court, at a special term, for an order requiring such towns severally to reimburse such expenditures, which application shall be made upon papers to be served upon the town superintendents of such towns at least eight days prior thereto; and the court may grant an order requiring each adjoining town or towns to pay its just proportion of the expenditure, specifying the same; and the town superintendent of each of such towns shall forthwith serve a copy of such order upon the supervisor of each of their towns, who shall present the same to the board of supervisors, at their next annual meeting. The board of supervisors shall raise the amount charged upon each town by the order, and cause the same to be collected and paid to such persons or corporation as incurred the expenditure. The order shall be appealable.

§ 262-a. **Construction or improvement of bridge by county and town or towns.** The board of supervisors of a county may provide for the construction or improvement of a bridge in one or more towns of a county and at the joint expense of the county and town or towns as provided in this section. The board may by resolution direct the district or county superintendent to examine such bridge and report thereon, and if the board considers such bridge to be of sufficient importance to be constructed or improved as provided herein, it shall direct such district or county superintendent to prepare or cause to be prepared maps, plans, specifications and estimate thereon, and such district or county superintendent shall, subject to the direction and control of the board of supervisors, have the same powers and duties in respect to such bridge as are given to him with respect to state-county highways in section one hundred and twenty-five of this chapter. Upon the completion of such maps, plans, specifications and estimate, they are to be submitted to the board of supervisors for approval, and such board shall thereupon adopt a resolution providing for the construction or improvement of such bridge in accordance with such plans, maps, specifications and estimate, or in accordance with such maps, plans specifications and estimate as may be approved by it. The board of supervisors shall award

for the construction or improvement of such bridge and the provisions of section one hundred and thirty of this chapter shall apply so far as may be to such contracts and the award, execution and fulfillment thereof. Such contract may be awarded to the town board of any town in which such bridge is located and the provisions of section one hundred and thirty-one of this chapter shall apply thereto. The board of supervisors shall determine the apportionment of the cost of the construction or improvement of such bridge to be borne by the county and the portion to be borne by the town or towns in which such bridge is located, or by the town or towns in which such bridge is not located but which are particularly benefited thereby. The amount to be borne by the county shall be levied and collected as a county charge and paid into the county treasury. The amount to be borne by a town shall be levied and collected as a town charge, and when collected shall be paid into the county treasury. If such bridge shall be located in a different position from an existing bridge, the board of supervisors shall acquire land for the requisite construction, and such board may also acquire land for the purpose of obtaining gravel, stone or other material when required for the construction or improvement of such bridge, together with a right of way to the bed, pit or quarry, or other place where such gravel, stone or other material may be located; and the provisions of sections one hundred and forty-eight to one hundred and fifty-five both inclusive shall apply to the acquisition of such land as far as may be, except that the cost of such land and the expense incident to acquiring the same shall be deemed a part of the cost of the construction and improvement of such bridge under the provisions of this section. The board of supervisors may by resolution authorize the county treasurer of the county or the supervisors of the respective towns to borrow money on the faith and credit of the county and of such towns by temporary loans in anticipation of the next succeeding tax levy or an issue of bonds for such levy or by the issue and sale of bonds to pay the portion of the cost of the construction or improvement to be borne respectively by the county or such town or towns. Such resolution may also provide for the issue and sale of bonds and shall conform as nearly as may be to the provisions of this chapter relating to a resolution authorizing a town to borrow money to its share of the cost of construction or improvement of a ty highway. The construction or improvement authorized

by such resolution shall be done under the supervision and direction of the district or county superintendent. Payments therefor shall be made from time to time by the county treasurer upon the certificate of the district or county superintendent indorsed by the chairman of the board of supervisors. Such bridge when completed and accepted by the board of supervisors shall be thereafter repaired and maintained at the sole expense of the town or towns in which it is located unless the board of supervisors shall apportion a share of the expense of the repair and maintenance thereof upon the county, or upon the town or towns particularly benefited.

Added by L. 1918, ch. 327.

§ 263. **Resolution of board of supervisors for abolition of toll bridges.** The board of supervisors of any county may, and upon the presentation of a petition signed by fifty per centum of the owners of real property and representing a majority of the assessed valuation of the town or city in which a toll bridge is wholly or partly situated must, except where such bridge extends between the state of New York and a foreign country, pass a resolution that public interest demands the abolition of such toll bridge situate wholly or partly within said county. In case of a toll bridge situated in two counties such resolution shall be a concurrent resolution passed by the boards of supervisors of the counties wherein said bridge is situated. Within ten days after the passage of such resolution the clerk or clerks of the board or boards of supervisors shall transmit certified copies thereof to the state commission of highways. Before transmitting such certified copy or copies to the state commission of highways, the board or boards of supervisors shall investigate as to the value of such toll bridge and shall prepare an estimate of the probable cost of acquiring the same, and the clerk or clerks shall transmit such estimate, together with any data in relation to the value of such toll bridge which the board or boards of supervisors may secure, to the state commission of highways with the certified copy or copies of such resolution.

Added by L. 1909, ch. 146, and amended by L. 1910, ch. 569.

§ 264. **Investigation by the state commission of highways.** The state commission of highways shall upon the receipt of such resolution or concurrent resolution, investigate and determine whether

the bridge so sought to be abolished is of sufficient public importance to come within the provisions of this article, taking into account the use, location and value of such toll bridge for the purpose of common traffic and travel and shall also investigate as to the value of such toll bridge and from the estimate and data transmitted by the board or boards of supervisors, or from such other information as the commission may secure, prepare an estimate of the probable cost of acquiring such toll bridge. After such investigation such commission shall certify its approval or disapproval of such resolution. If it shall disapprove such resolution, it shall certify its reasons therefor to such board or boards of supervisors. If it shall approve such resolution it shall certify its approval thereof to the attorney-general, and shall transmit to him the estimate made by the commission of the probable cost of acquiring such toll bridge, together with any data the commission may have in its possession in relation to the value thereof.

Added by L. 1909, ch. 146, and amended by L. 1910, ch. 569.

§ 265. **Acquisition by Attorney-General.** Upon the receipt of such certification of approval the attorney-general shall apply to the court, in the name of the people of the state, for the appointment of a commission to appraise the value of said toll bridge and the franchise thereof and proceed to acquire title to said toll bridge and its franchise rights in accordance with the provisions of the code of civil procedure for the condemnation of property for public purposes. When said commission shall have determined the value of such toll bridge, the attorney-general shall certify such determination to the comptroller and to the board or boards of supervisors of the county or counties wherein such toll bridge is situated. After the receipt thereof, upon a majority vote of the board or boards of supervisors, they shall adopt a resolution approving the purchase of said toll bridge under the provisions of this article and providing for the payment of the county's share thereof and thereupon shall transmit a certified copy of such resolution to the state comptroller. The condemnation and purchase of toll bridges under the provisions of this article shall be taken up and carried forward in the order in which they are finally designated as determined by the date of the receipt in each case of the certified copy of the approval by the state commission of highways.

Added by L. 1909, ch. 146.

§ 266. **Payment of expense of acquisition.** One-half of the expense incurred in the condemnation and acquirement of said toll bridge shall be paid by the state treasurer upon the warrant of the comptroller out of any specific appropriations made to carry on the provisions of this article, but no such payment shall be made until the county or counties in which said toll bridge is situate shall have complied with all the provisions hereof. One-half of the expenses thereof shall be a charge, in the first instance, upon the county or counties in which said toll bridge is situate, and the same shall be paid by the county treasurer upon the requisition of the comptroller, but the amount so paid shall be apportioned by the board of supervisors so that thirty-five per centum of such cost shall be a general county charge and fifteen per centum shall be a charge upon the town or towns or city or cities in which said toll bridge is wholly or partly located. In case a toll bridge is located in two counties the fifty per centum of the expense to be borne by the counties shall be apportioned between them on the basis of their assessed valuation and the fifteen per centum shall be apportioned by the board of supervisors upon the town or towns or city or cities in the same manner. The board of supervisors of a county, the town board of a town or the common council of a city may determine that the portion of the expense chargeable to such county, town, or city, as the case may be, shall be raised by taxation and levied and collected as other municipal taxes, or that the money therefor be raised by the issue and sale of municipal bonds. In the case of a town such bonds shall be issued and sold in the manner provided by law for the issue and sale of town bonds, under the town law, to pay judgments.

Added by L. 1909, ch. 146 and amended by L. 1914, ch. 81.

§ 267. **Maintenance of bridge.** When a toll bridge shall have been acquired by the state under the provisions of this article it shall be maintained as a free bridge and the expense thereof shall be a charge upon the town or towns or city or cities within which it is situated. Upon the acquisition of any toll bridge as provided in this article, the board or boards of supervisors of the county or counties in which said toll bridge is located shall upon notice of such acquisition from the comptroller, accept and maintain the same as a part of the highway system of said county or counties and such acceptance shall be deemed to have been

formally taken at the expiration of twenty days from the notice of said acquisition by the state comptroller.

Added by L. 1909, ch. 146.

§ 268. **Use of toll bridge by public service corporations; conditions; powers of town board.** After a bridge shall be acquired by the state under the provisions of this article, the same shall not be used by any railroad, telephone, gas, electric light, heat or power company or any other public service corporation, for any purpose except upon such terms and the payment of such rental as shall be determined by the town board of the town or towns and the common council of the city or cities within which it is situated. The money received therefor shall be divided equally between the localities. The provisions of this section, however, shall not affect any existing contract for the use of such bridge by any such corporation, except that the compensation provided for such use in such existing contract shall be paid to the localities as herein provided.

Added by L. 1910, ch. 569.

§ 269. **Acquisition of certain toll bridges at the expense of the state.** If a toll bridge for the traffic of vehicles and foot passengers constitutes a connecting link between two state routes as described in section one hundred and twenty of this chapter, or constitutes a part of a state route and is included in the description thereof, the board of supervisors of the county in which such bridge is situated, or if situated in two counties the boards of supervisors of such counties concurrently, may, by resolution, petition the state commission of highways for the acquisition of such bridge by the state pursuant to this section. Within ten days after the passage of such resolution the clerk or clerks of the board or boards of supervisors shall transmit certified copies thereof to the state commission of highways together with an estimate of the probable cost of acquiring the same and any data in relation to the value thereof which the board or boards of supervisors may secure.

The state commissioner of highways shall upon receipt of such resolution or concurrent resolution, and within three months thereafter, investigate and determine whether the public interest demands the acquisition of such bridge by the state and shall also within said three months approve or disapprove of such resolution and if such resolution be approved shall prepare an estimate of the

probable cost of acquiring such bridge. If such resolution be disapproved the commission shall certify its reason therefor to such board or boards of supervisors.

If it be approved the commission of highways is hereby authorized and empowered to agree with the corporation owning the said bridge upon the compensation which shall be made to it for the said bridge and its appurtenances, its franchises, its rights for the maintenance and use of said bridge, and any and all damage which shall result to said corporation so owning the said bridge by reason of the taking of such structure, and such agreement shall be reduced to writing and executed by the commission of highways in the name of the people of the state of New York and by the corporation owning the said bridge, and filed in the office of the comptroller of the state of New York.

In the event that no agreement is reached between the said commission of highways and the corporation owning the said bridge for such purchase as aforesaid, the commission shall certify its approval to the attorney-general and transmit to him the estimate made by the commission of the probable cost of acquiring such toll bridge, franchise and rights, and the amount of any and all damage incurred by such acquisition, together with all data the commission may have in its possession in relation thereto.

Upon the receipt of such certificate of approval, if and when sufficient money shall have been appropriated by the state therefor, the attorney-general shall apply to the court in the name of the people of the state for the appointment of a commission, in accordance with the provisions of the code of civil procedure for the condemnation of property for public purposes, to appraise the value of such bridge, its franchises, rights and any and all damage which shall result to such corporation so owning the said bridge by reason of the taking of the structure and its rights and franchises in connection therewith.

The amount agreed upon between the said commission of highways and the said corporation, pursuant to such agreement so filed as aforesaid, or if no agreement be reached, the amount so appraised and determined by such condemnation commissioners, with the expenses of such condemnation, shall be paid by the state treasurer upon the warrant of the comptroller out of the moneys appropriated for such purpose. Until payment to such corporation be made after such agreement of the amount therein agreed to be paid or upon condemnation the amount so appraised and

determined in such condemnation proceedings, the corporation owning the said bridge shall be entitled to continue in possession and use thereof and of all the rights, privileges and franchises enjoyed by it in connection therewith, but upon such payment being made such bridge and all rights and franchises in connection therewith shall become the property of the state of New York and shall be maintained by the state as a free bridge and as a part of the state system of highways.

If such bridge be acquired by the state pursuant to this section the same shall not be used except as hereinafter provided by any railroad, telephone, gas, electric light, heat or power company or any other public service corporation for any purpose except upon such reasonable terms and the payment of such reasonable rental to the state as shall be determined by the commission of highways. The money received therefor shall be paid into the state treasury and so much thereof as may be needed appropriated for the maintenance of such bridge. The provisions of this section, however, shall not affect any existing contract for the use of such bridge by any corporation except that the compensation provided for such use in such existing contract shall be paid to the state.

Notwithstanding the provisions of this section, if any such bridge be owned by a domestic corporation carrying on the business of operating a railroad and which operates cars thereover, the commission of highways in entering into such agreement or the commissioners in condemnation in making such appraisal and fixing such damages as aforesaid may take into consideration any bonds outstanding of such corporation which may have been authorized by any public service commission of this state to be issued by such corporation for the purchase of said bridge and its franchises or the stock of any corporation formerly owning the said bridge, and shall fix and determine in making such appraisal the amount of any and all damage which will result to such corporation so owning such bridge by reason of the taking of the said bridge and its rights and franchises in connection therewith, and such corporation when said bridge shall have been acquired and such compensation paid, and its successors, shall be permitted to continue to use said structure upon payment of such reasonable rental to the state for such use as shall be determined by the commission of highways, and further provided that if such corporation, or any successor thereof, should desire to use other parts or decks of such bridge or make such use thereof as would require the strengthening, reconstruction or change of the said bridge or its

approaches, or the building of new approaches to the said bridge, such corporation or its successors may make such use thereof and strengthen, reconstruct or make such changes in the said bridge or its approaches or build new approaches to the said bridge and use the same in such manner upon filing with the commission of highways detailed plans for the proposed new use thereof, or for the strengthening, reconstruction of or changes in the said bridge or its approaches or for the building of new approaches to the said bridge, and upon obtaining the approval of such use and plans by the commission of highways and upon payment of such further reasonable rental to the state for any such additional use of said structure or such approaches as shall be determined by the commission of highways; provided further that the entire cost of any such strengthening, reconstruction, additions or changes of the said bridge or its approaches shall be paid exclusively by the corporation making such use of said bridge and shall be deemed to be an expenditure for capital purposes of such corporation paying the same for all purposes whatsoever. Any such corporation using such bridge at the time of the acquisition thereof by the state shall not be debarred from continuing such use by reason of such acquisition; but the failure or refusal to comply with such terms or to pay such rental shall forfeit the right of such corporation to use such bridge, and the state commission of highways is hereby authorized and empowered to close such bridge to the use of such offending corporation.

Any act or failure to act on the part of the commission of highways as in this section provided shall be reviewable by the supreme court of this state by mandamus or certiorari or such other appropriate remedy as the case may require.

Added by L. 1917, ch. 598.

## ARTICLE 9-A.

### Bridges in Certain Counties.

#### Section 269-a. Application of article.

- 269-b. Construction, maintenance and control of bridges.
- 269-c. Plans and specifications to be prepared.
- 269-d. Condemnation of bridges.
- 269-e. Liability of county for damages.
- 269-f. Annual estimate of amount to be raised for bridge purposes.
- 269-g. Manner of providing money for bridges.
- 269-h. Construction of bridges to be by contract.
- 269-i. Reconstruction and repairs after condemnation.
- 269-j. Bridges upon county boundaries.

§ 269-a. **Application of article.** So far as this article relates to a bridge wholly within a county its application is limited to a county having a population of less than two hundred thousand, adjacent to a city of the first class having a population of over three millions. So far as it relates to a bridge crossing the boundary line of two counties, its application is limited to such county and an adjoining county. A bridge, within the meaning of this article, shall be deemed to mean a bridge having a span of more than five feet. The provisions of sections two hundred and fifty-one to two hundred and sixty-two, inclusive, of this chapter, shall not apply to a bridge described in this or the next section.

§ 269-b. **Construction, maintenance and control of bridges.** Bridges in any such county over streams or waterways intersecting or at the terminus of state highways, county highways or county roads shall be constructed, repaired and maintained by the county. Bridges connecting any such state or county highway or county road, over a stream or waterway, with a street, avenue, bridge or part of a bridge of an adjoining city of the first class or of a village or within an adjoining county, shall be constructed, repaired and maintained at the joint expense of such county and city or of such county and village or of such adjoining counties, as the case may be. The construction, repair and maintenance of a bridge wholly within the county shall be under the supervision of the county engineer. The construction, repair and maintenance of a bridge between a county described in section two hundred and sixty-nine-a and an adjoining county shall be under the supervision of the county engineers of the respective counties, unless they fail to agree in any matter and the state commissioner of highways may assume jurisdiction, in which case such commissioner shall have the supervision of such construction, repair or maintenance during such time as he shall consider advisable. The construction, repair and maintenance of a bridge connecting a state or county highway or county road, in any such county, with a street, avenue or bridge of an adjoining city of the first class shall be under the supervision of the county engineer of such county and the authorities of such city having control by law of its bridges, unless such authorities and county officer shall be unable to agree in any matter and the state commissioner of highways may assume jurisdiction, in which case such construction, repair or maintenance shall be under his supervision. The construction, repair and maintenance of a bridge connecting a state

or county highway or county road in any such county, with a street, avenue or bridge of an adjoining village shall be under the supervision of the county engineer of such county, and the authorities of such village having control by law of its bridges.

§ 269-c. **Plans and specifications to be prepared.** Plans, specifications and estimates for the repair or construction of any such bridge shall be prepared by the authorities having, in the first instance, supervision of such repair or construction. All such plans, specifications and estimates shall be submitted to the state commissioner of highways for approval, and the same shall not be used until approved by him.

§ 269-d. **Condemnation of bridges.** The board of supervisors of such county shall cause an inspection to be made of any bridge which is reported to be unsafe for public use and travel by the county engineer or five residents of the county. If such bridge is found to be unsafe for public use and travel, said board of supervisors shall condemn such bridge and notify the county engineer of that fact. Such board of supervisors may direct the county engineer to prepare or cause to be prepared plans and specifications for the construction or reconstruction or repair of such bridge without delay. Upon receipt of such plans and specifications, such board of supervisors shall, after approving the same, procure estimates for the reconstruction or repair of such bridges as herein provided.

§ 269-e. **Liability of county for damages.** The county shall be liable for damages suffered by any person from defects in any such bridge, located wholly within the county. Where such bridge is located in two counties, such counties shall be jointly and severally liable for such damages.

§ 269-f. **Annual estimate of amount to be raised for bridge purposes.** The county engineer of such county shall, on or before December first in each year, prepare and submit to the board of supervisors of such county a statement of the amount necessary for the construction, improvement and maintenance of such bridges or parts of such bridges within the county. The county engineer of an adjoining county shall also, on or before such day in each year, prepare and submit to the board of supervisors of his county a statement of the amount necessary to be provided by the county for the construction, improvement and maintenance of

bridges crossing the boundary between the latter county and the county first mentioned. Each statement provided for in this section shall show the total amount required and the location of the bridges for repair, construction and maintenance of which such amount is necessary.

§ 269-g. **Manner of providing money for bridges.** The board of supervisors of any such county shall, upon the receipt of the county engineer's annual statement, consider the estimate made therein of moneys required for the construction, repair or maintenance of bridges. The board may by resolution adopted by a majority vote approve, increase or reduce the amount of any such estimates. All such estimates as finally adopted shall be signed in duplicate by the chairman and clerk of the board, and one copy thereof shall be filed with the county clerk and the other with the county treasurer. The board of supervisors shall thereupon cause the amounts of such estimates to be assessed, levied and collected in the same manner as other county charges; or the board may borrow on the credit of the county the amount of any estimate or estimates for construction or the permanent betterment of any such bridge or bridges. For that purpose it may direct the issue of bonds of the county by the county treasurer. Such bonds shall not bear interest at a greater rate than five per centum per annum, and no such bonds shall be for a longer term than twenty years. Such bonds shall not be sold for less than par. Moneys derived from such taxation or realized from the sale of such bonds shall be used exclusively for the objects and purposes of the tax or debt as provided in this article. Nothing herein contained shall prevent the board of supervisors from adding to the estimates of the county engineer, as contained in his annual statement, an item or items for the construction, repair or maintenance of a bridge or bridges not provided for in such report, or a gross sum of not exceeding two thousand dollars for emergency construction of or repairs to such bridges for the ensuing year.

§ 269-h. **Construction of bridges to be by contract.** Whenever a bridge is to be constructed or any improvement or repairs made thereto by a county, under the provisions of this article, except ordinary repairs, such work shall be done by contract where the estimated cost exceeds five hundred dollars. Contracts shall be awarded for the performance of the work in accordance with the plans and specifications thereof prepared as provided in this article. The board of supervisors shall have charge of the letting

of the contract. Any such contract shall be allowed to the lowest bidder, after advertisement once a week, for three successive weeks, in a newspaper published in the county. The bids for such work shall be opened in public and shall be filed in the office of the clerk of the board of supervisors. No such contract shall be awarded until the form and sufficiency of execution thereof shall have been approved by the board of supervisors. The person to whom such contract is awarded shall execute a bond to the county, in a sum equal to fifty per centum of the amount of the contract, with two or more sureties to be approved by the board of supervisors, conditioned for the faithful compliance with the terms of the contract and the plans and specifications and for the payment of all damages which may accrue to the county because of a violation thereof. Not more than ninety per centum of the contract price shall be paid before the completion of the work and its acceptance by the board of supervisors. The amounts due from time to time on the contract shall be paid out of moneys available therefor under the provisions of the preceding section. Payments upon such contracts, or for any other item of construction, maintenance or repair of such bridges, shall be made by the county treasurer upon certificates or warrants issued by the county superintendent, approved by the board of supervisors and the county comptroller.

§ 269-i. **Reconstruction and repairs after condemnation.** Upon receiving notice of the condemnation of a bridge wholly within the county, the chairman of the board of supervisors shall call a meeting of the board, and such board shall appropriate and make immediately available the necessary moneys for the immediate rebuilding of such bridge. If the expense thereof shall not have been included in an estimate furnished by the county engineer in his annual statement, or as adopted by the board, or if there be no moneys in the county treasury available therefor, the board may cause the county treasurer to borrow on the credit of the county the moneys necessary to repair or rebuild the part so condemned, in the manner provided in section two hundred and sixty-nine-g. As soon as moneys are available therefor, the county engineer under the direction of the board of supervisors shall proceed with the repairing or rebuilding of such condemned bridge.

§ 269-j. **Bridges upon county boundaries.** If the board of supervisors of a county described in section two hundred and sixty-nine-a and of an adjoining county, across whose boundaries any

such bridge is located, shall by resolution concur in determining upon the construction or repair of such bridge, the respective board of supervisors of such counties may unite in a contract with a person, firm or corporation therefor. If any such bridge shall have been condemned under the provisions of this article and if such boards of supervisors shall fail to concur in ordering the necessary repairs to or rebuilding of such bridge within three months after the condemnation, or if within the same time after a demand therefor by the state commissioner of highways the board of supervisors of either county shall fail to make available the necessary moneys therefor, or if the board of supervisors of either county shall determine that such improvements or repairs are necessary, and if both counties fail to concur therein, the board of supervisors of the county making such determination may submit the same to the state commissioner of highways. If such determination be approved by such commissioner, the board of supervisors making such determination may cause notice in writing to be served upon the chairman of the board of supervisors of the other county demanding that such county concur therein. If such concurrence be withheld or if necessary moneys be not made available for such work by the board of supervisors of the county upon which such demand is served, the board of supervisors giving such notice may provide the necessary moneys for the entire work of such improvement or repairs. Where one county has provided all of the money for the construction or improvement of such joint bridge, it may maintain an action against the county in default and recover from the defendant one-half of the cost or expense of such work, with costs of the action and interest. It shall be necessary to a recovery for the plaintiff to prove that the repairs or improvements were reasonably necessary; but the approval of the state commissioner of highways of plaintiff's determination for such improvement or repairs shall be prima facie evidence of the reasonable necessity therefor. No such action for the expense of the construction of a new bridge at a new site between counties shall be maintained unless the boards of supervisors of both counties shall have determined, by concurrent resolution, upon the construction thereof.

The board of supervisors and the lawful authorities of an adjoining city of the first class or of an adjoining village may likewise concur in determining upon the construction, improvement or repair of a bridge between such county and city and may unite in a contract with a person, firm or corporation therefor.

Whole of article 9-a added by L. 1917, ch. 589.

## ARTICLE X.

**Ferries.****Section 270. Licenses.**

271. Undertaking.

272. Appendages for rope ferries.

273. Superintendent of public works may lease right of passage.

274. When schedules to be posted.

§ 270. **Licenses.** The county court in each of the counties of this state or the city court of a city, may grant licenses for keeping ferries in their respective counties and cities, to such persons as the court may deem proper, for a term not exceeding five years. No license shall be granted to a person, other than the owner of the land through which that part of the highway adjoining to the ferry shall run, unless the owner is not a suitable person or shall neglect to apply after being served with eight days' written notice from such person of the time and place at which he will apply for such license, or having obtained such license, shall neglect to comply with the conditions of the license or maintain the ferry. Every license shall be entered in the book of minutes of the court by the clerk; and a certified copy thereof shall be delivered to the person licensed. When the waters over which any ferry may be used shall divide two counties or cities, or a county and city, a license obtained in either of the counties or cities shall be sufficient to authorize transportation of persons, goods, wares and merchandise, to and from either side of such waters.

§ 271. **Undertaking.** Every person applying for such license shall, before the same is granted, execute and file with the clerk of the court his undertaking with one or more sureties, approved by the court, to the effect that he will attend such ferry with sufficient and safe boats and other implements, and so many men to work the same as shall be necessary during the several hours in each day, and at such rates as the court shall direct.

§ 272. **Appendages for rope ferries.** Any person licensed to keep a ferry may, with the written consent of the town superintendent of the town where such ferry may be, erect and maintain within the limits of the highway, at such point as shall be designated in such consent, a post or posts, with all necessary braces and appendages for a rope ferry.

§ 273. **Superintendent of public works may lease right of passage.** The superintendent of public works, may, where ferries are now maintained at tide-water, lease the right of passage for foot passengers across state lands adjoining tide-water for a period not exceeding ten years, on such conditions as he may deem advantageous to the state.

§ 274. **When schedules to be posted.** Every person licensed to operate or control any ferry in this state, or between this state and any other state, operating from or to a city of fifty thousand inhabitants or over, shall post in a conspicuous and accessible position outside and adjacent to each entrance to such ferry, and in at least four accessible places, in plain view of the passengers upon each of the boats used on such ferry, a schedule plainly printed in the English language of the rates of ferriage charges thereon, and authorized by law to be charged for ferriage over such ferry. If any such person shall fail to comply with the provisions of this section, or shall post a false schedule, he shall forfeit the sum of fifty dollars for each day's neglect or refusal to post such schedule or any of them, to be recovered by any person who shall sue therefor in any court of competent jurisdiction.

## ARTICLE XI.

### Motor Vehicles.

*(Entire article added by L. 1910, ch. 374.)*

Section 280. Application of article.

281. Definitions.

282. Registration of motor vehicles; age of operator; fees; renewals.

282-a. Auto trucks and trailers in excess of twenty-five thousand pounds.

283. Distinctive number; form of number plates.

284. Registration by manufacturers and dealers; re-registration.

284-a. Limited use of dealers' number plates by vendee.

285. Exemption of nonresident owners.

286. Signaling and other devices; signals; rules of the road.

286-a. Transparently illuminated rear plates.

287. Speed permitted.

288. Local ordinances prohibited.

289. License of chauffeurs; renewals.

290. Punishment for violation; procedure.

290-a. Suspension and revocation of a license of operator or chauffeur.

290-b. Certificate by magistrate.

291. Disposition of registration fees; fines and penalties.

292. Rates of toll on motor vehicles.

293. Acts repealed.

§ 280. **Application of article.** Except as herein otherwise expressly provided, this article shall be exclusively controlling:

1. Upon the registration, numbering and regulation of motor vehicles and the licensing and regulation of chauffeurs and operators;
2. On their use of the public highways, and
3. On the accessories used upon motor vehicles and their incidents and the speed of motor vehicles upon the public highways;
4. On the punishment for the violation of any of the provisions of this article.

Amended by L. 1917, ch. 769.

§ 281. **Definitions.** The term "motor vehicle" as used in this article, except where otherwise expressly provided, shall include all vehicles propelled by any power other than muscular power, except motor bicycles, motor cycles, traction engines, road rollers, fire wagons and engines, police patrol wagons, ambulances and such vehicles as run only upon rails or tracks. The term "local authorities" shall include all officers of counties, cities, boroughs, towns or villages, as well as all boards, committees and other public officials of such counties, cities, boroughs, towns or villages. The term "chauffeur" shall mean any person operating or driving a motor vehicle, as an employee or for hire. The term "operator" shall mean any person, other than a chauffeur, who operates a motor vehicle in a county wholly included in a city. The term "state" as used in this article, except where otherwise expressly provided, shall also include the territories and the federal districts of the United States. The term "owner" shall also include any person, firm, association or corporation renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days. The term "public highway" shall include any highway, county road, state road, public street, avenue, alley, park, parkway or public place in any county, city, borough, town or village, except any speedway which may have been or may be expressly set apart by law for the exclusive use of horses and light carriages. The term "omnibus," as used in this article, shall include any motor vehicle held and used for the transportation of passengers for hire.

Amended by L. 1911, ch. 491, L. 1917, ch. 2 and L. 1917, ch. 769.

§ 282. **Registration of motor vehicles; age of operator; fees; renewals.** 1. **Registration by owners.** Every owner of a motor vehicle

which shall be operated or driven upon the public highways of this state, shall, except as herein otherwise expressly provided, cause to be filed, by mail or otherwise, in the office of the secretary of state, a verified application for registration on a blank to be furnished by the secretary of state for that purpose, containing: (a) A brief description of the motor vehicle to be registered, including the name of the manufacturer and factory number of such vehicle, the character and amount of the motive power stated in figures of horse power in accordance with the rating established by the Association of Licensed Automobile Manufacturers; (b) the name, age, residence, including county and business address, of the owner of such motor vehicle; (c) provided that, if such motor vehicle is used or to be used for purposes mentioned in subdivision six-a of this section, the applicant shall so certify, and also certify as to the weight of the truck and carrying capacity, or in the case of an omnibus the seating capacity, or if the omnibus is to be operated wholly within a municipality pursuant to a franchise other than a franchise express or implied in articles of incorporation, upon certain streets designated in such franchise, those facts shall also be certified, and a certified copy of such franchise furnished to the secretary of state. Every owner of a vehicle, commonly known as a "trailer," for the transportation of goods, wares and merchandise, not propelled by its own power, to be drawn on the public highways by a motor vehicle operated thereon shall also make application for the registration thereof in the manner herein provided for an application to register a motor vehicle, without the statement relating to motive power; but the application shall set forth the combined weight and carrying capacity of such trailer.

Amended by L. 1917, ch. 2 and L. 1917, ch. 727.

2. Restriction on operation. No person shall operate or drive a motor vehicle who is under eighteen years of age, unless such person is accompanied by a duly licensed chauffeur or the owner of the motor vehicle being operated. No person shall operate or drive a motor vehicle in a county wholly included within a city unless such person is a duly licensed chauffeur or operator, whether the owner of such vehicle or otherwise; provided, however, that a person of the age of eighteen years and upwards who shall reside outside of such county and within the state may so operate or drive, except as a chauffeur, for not to exceed ten days in any year without being so licensed. The secretary of state

may, however, in his discretion, grant a written permit to any person desiring to fit himself to so operate or drive a motor vehicle within such county. Such permit shall not continue for more than ten days from its date, but may be renewed from time to time not to exceed a total of thirty consecutive days. The holder thereof shall not so operate or drive unless at all times under the immediate supervision and control of an operator or chauffeur duly licensed under this article. Such holder, operator or chauffeur shall be liable for any violation of this act or of any local ordinance, rule or regulation permitted thereunder while so operating. The secretary of state may make any suitable regulations concerning the issue and use of such permits and may demand a fee of fifty cents for each such permit or renewal thereof.

Amended by L. 1917, ch. 769, and L. 1919, ch. 472.

3. Registration book. Upon the receipt of an application for registration of a motor vehicle, as provided in this article, the secretary of state shall file such application in his office at Albany, and in cities of the first class and such other places within the state of New York as he may designate and register such motor vehicle or vehicles, with the name, residence and business address of the owner, together with the facts stated in such application, in a book or index to be kept for the purpose, under the distinctive number assigned to such motor vehicle by the secretary of state, which book or index shall be open to public inspection during reasonable business hours.

Amended by L. 1917, ch. 174, and L. 1918, ch. 75.

4. Certificate of registration. Upon the filing of such application and the payment of the fee hereinafter provided, the secretary of state shall assign to such motor vehicle a distinctive number and, without expense to the applicant, issue and deliver in such manner as the secretary of state may select to the owner a certificate of registration, in such form as the secretary of state shall prescribe, and two number plates at a place within the state of New York named by the applicant in his application. In the event of the loss, mutilation or destruction of any certificate of registration provided for in this article or of any number plate provided for in this section or of any license or badge, the owner of a registered motor vehicle or manufacturer, or dealer, or operator, or chauffeur, as the case may be, may obtain from the secretary

of state a duplicate thereof upon filing in the office of the secretary of state an affidavit showing such fact and the payment of a fee of one dollar. It shall be the duty of every owner, operator or chauffeur holding a certificate as such from the secretary of state, to notify the secretary of state in writing of any change of residence of such person within ten days after such change occurs.

Amended by L. 1917, ch. 174 and L. 1917, ch. 769.

5. Times for registration and re-registration. Registration applied for on or before August first, nineteen hundred and seventeen, shall take effect on that date and certificates issued on such application or under any application made prior to January thirty-first, nineteen hundred and eighteen, shall expire on the latter date. The fees for such registration shall be one-half of the annual fees provided herein. Registration thereafter shall be renewed annually in the same manner and upon payment of the same annual fee as provided in this section for registration, to take effect on the first day of February, in each year beginning with such date in the year nineteen hundred and eighteen; and the certificates of registration issued thereunder or issued between any such dates shall expire on the succeeding thirty-first day of January. Nothing contained in this subdivision shall affect the registration of motor vehicles previously registered in accordance with the provisions of this section, prior to this amendment.

Amended by L. 1917, ch. 769.

6. Registration fees. The following fees shall be paid to the secretary of state upon the registration or re-registration of a motor vehicle in accordance with the provisions of this article: twenty-five cents per horse power for the rated horse power of such motor vehicle; if the registration or re-registration occur in the calendar year in which such motor vehicle was manufactured or within three years after the expiration of such year, the additional fee of forty cents for each one hundred dollars, or major fraction thereof, of the listed price of such motor vehicle fully equipped; if at the time of such registration or re-registration, three years but not more than five years shall have expired since the expiration of the calendar year in which such motor vehicle was manufactured, the additional fee of twenty cents for each one hundred dollars, or major fraction thereof, of the listed price of such motor vehicle fully equipped;

for each subsequent registration or re-registration of such motor vehicle the additional fee of ten cents for each one hundred dollars, or major fraction thereof of the list price of such motor vehicle fully equipped; provided, however, that the total fees at any time for the registration or re-registration of a six cylinder motor vehicle shall be not less than ten dollars, and for the registration or re-registration of a four cylinder motor vehicle shall be not less than five dollars; provided further, that if a motor vehicle is originally registered after August first in any year, the register fee for that year shall be one-half of the fee herein provided for; and further provided that for motor vehicles which are used or to be used for purposes mentioned in subdivision six-a of this section, the fee for such registration shall be as therein prescribed. The provisions hereof with respect to the payment of registration fees shall not apply to motor vehicles owned or controlled by the state, a city, county, village or town or any of the departments thereof, but in other respects shall be applicable.

Amended by L. 1911, ch. 491; L. 1915, ch. 348; L. 1917, ch. 2; L. 1918, ch. 47, and L. 1919, ch. 622.

6-a. Registration fees for auto trucks and omnibuses. The commissioner of highways, superintendent of public works and state engineer and surveyor having heretofore filed in the office of the secretary of state, in accordance with the former provisions of this subdivision, a schedule of registration fees to be paid upon the registration or re-registration, in accordance with the provisions of this article, of motor vehicles used as omnibuses for the transportation of passengers, and of motor vehicles constructed or specifically equipped for the transportation of goods, wares and merchandise and used or to be used for such purpose, and commonly known as auto trucks, such schedule as herein modified is hereby adopted and the registration fees for such auto trucks and for omnibuses are hereby established as follows:

#### SCHEDULE FOR MOTOR VEHICLES USED AS OMNIBUSES FOR THE TRANSPORTATION OF PASSENGERS.

For each such vehicle having a seating capacity for passengers of five passengers or less, the annual fee of fifteen dollars.

For each such vehicle having a seating capacity for passengers of not less than six passengers, nor more than seven passengers, the annual fee of twenty-four dollars and fifty cents.

For each such vehicle having a seating capacity for passengers of not less than eight passengers, nor more than ten passengers, the annual fee of thirty dollars and fifty cents.

For each such vehicle having a seating capacity for passengers of not less than eleven passengers, nor more than sixteen passengers, the annual fee of forty-three dollars.

For each such vehicle having a seating capacity for passengers of not less than seventeen passengers, nor more than twenty passengers, the annual fee of fifty-two dollars.

For each such vehicle having a seating capacity for passengers of not less than twenty-one passengers, nor more than twenty-two passengers, the annual fee of fifty-five dollars.

For each such vehicle having a seating capacity for passengers of not less than twenty-three passengers, nor more than twenty-six passengers, the annual fee of sixty-one dollars and fifty cents.

For each such vehicle having a seating capacity for passengers of not less than twenty-seven passengers, nor more than thirty passengers, the annual fee of sixty-seven dollars and fifty cents.

For each such vehicle having a seating capacity for passengers in excess of thirty passengers, the fee of sixty-seven dollars and fifty cents, and the additional fee of two dollars for each passenger (measured by seating capacity) in excess of thirty passengers.

Provided that if any such motor vehicle used as an omnibus for the transportation of passengers, and for which a fee is herein provided, is originally registered after August first in any year, the register fee for that year shall be one-half of the fee herein provided for such motor vehicle; and provided further that upon the registration or re-registration of any omnibus mentioned herein the number plates to be issued therefor shall, upon the payment of an additional fee of two dollars for each omnibus, be the same in form as is issued for passenger motor vehicles which are not omnibuses.

The foregoing schedules shall not apply to omnibuses operated pursuant to a franchise other than a franchise express or implied in articles of incorporation over streets designated in said franchise wholly within the municipality, and for any such omnibus, without regard to the seating capacity, the annual fee shall be ten dollars; but if any such omnibus shall be also operated outside of the municipality then the foregoing schedule of fees shall apply thereto; and provided further that if any such

omnibus for which a ten-dollar fee is herein provided is originally registered after August first in any year the fee for that year shall be one-half the fee herein provided for such omnibus.

**SCHEDULE FOR MOTOR VEHICLES, COMMONLY KNOWN AS AUTO TRUCKS, USED FOR THE TRANSPORTATION OF GOODS, WARES AND MERCHANDISE.**

For each such vehicle having a combined weight of truck and carrying capacity of two tons or less, the annual fee of ten dollars.

For each such vehicle having a combined weight of truck and carrying capacity of more than two tons, and not more than three tons, the annual fee of fifteen dollars.

For each such vehicle having a combined weight of truck and carrying capacity of more than three tons, and not more than four tons, the annual fee of twenty dollars.

For each such vehicle having a combined weight of truck and carrying capacity of more than four tons, and not more than five tons, the annual fee of twenty-five dollars.

For each such vehicle having a combined weight of truck and carrying capacity of more than five tons, and not more than six tons, the annual fee of thirty dollars.

For each such vehicle having a combined weight of truck and carrying capacity of more than six tons, and not more than seven tons, the annual fee of thirty-five dollars.

For each such vehicle having a combined weight of truck and carrying capacity of more than seven tons, and not more than eight tons, the annual fee of forty dollars.

For each such vehicle having a combined weight of truck and carrying capacity of more than eight tons, and not more than nine tons, the annual fee of forty-five dollars.

For each such vehicle having a combined weight of truck and carrying capacity of more than nine tons, and not more than ten tons, the annual fee of fifty dollars.

For each such vehicle having a combined weight of truck and carrying capacity of more than ten tons, and not more than eleven tons, the annual fee of fifty-five dollars.

For each such vehicle having a combined weight of truck and carrying capacity, of more than eleven tons, and not more than twelve tons, the annual fee of sixty dollars.

For each such vehicle having a combined weight of truck and

carrying capacity of more than twelve tons, and not more than thirteen tons, the annual fee of sixty-five dollars.

For each such vehicle having a combined weight of truck and carrying capacity of more than thirteen tons, and not more than fourteen tons, the annual fee of seventy dollars.

For each such vehicle having a combined weight of truck and carrying capacity in excess of fourteen tons, the fee of seventy dollars, and the additional fee of ten dollars for each ton in excess of fourteen tons.

Provided that if any such motor vehicle, commonly known as a truck, used for the transportation of goods, wares and merchandise and for which a fee is herein provided, is originally registered after August first in any year, the register fee for that year shall be one-half the fee herein provided for such motor vehicles.

§ 2. This act shall not affect a motor vehicle registration heretofore made.

Added by L. 1916, ch. 598 and amended by L. 1917, ch. 2, and L. 1917, ch. 724.

6-b. Registration fees for trailers. The foregoing provisions of this section in relation to registration books and registration, certificates of registration, number plates, duplicates of certificates and number plates, times for registration and re-registration and the duration thereof, for motor vehicles, shall apply also to trailers. The following fees shall be paid to the secretary of state upon the registration or re-registration of a trailer in accordance with the provisions of this article:

For each trailer having a combined weight of truck and carrying capacity of two tons or less, the annual fee of five dollars.

For each trailer having a combined weight of truck and carrying capacity or more than two tons and not more than five tons, the annual fee of ten dollars.

For each trailer having a combined weight of truck and carrying capacity of more than five tons and not more than seven tons, the annual fee of fifteen dollars.

For each trailer having a combined weight of truck and carrying capacity of more than seven tons and not more than ten tons, the annual fee of twenty dollars.

For each trailer having a combined weight of truck and carrying capacity of more than ten tons and not more than fourteen tons, the annual fee of thirty dollars.

For each trailer having a combined weight of truck and carrying capacity in excess of fourteen tons, the annual fee of thirty dollars and the additional fee of five dollars for each ton in excess of fourteen tons.

Provided that if any such trailer for which a fee is herein provided, is originally registered after August first in any year, the register fee for that year shall be one-half of the fee herein provided for such vehicles.

Added by L. 1917, ch. 727.

7. Fees in lieu of taxes. The registration fees imposed by this article upon motor vehicles, other than those of manufacturers and dealers, shall be in lieu of all taxes, general or local, to which motor vehicles may be subject.

Amended by L. 1919, ch. 622.

8. Sale and registration by vendee. Upon the sale or transfer of a motor vehicle registered in accordance with this section, the vendor shall immediately give notice thereof with the name and residence of the vendee to the secretary of state, and shall endorse upon the certificate of registration of such motor vehicle the name and address of the vendee and the date of delivery, and shall sign such endorsement. The vendee shall, within ten days after the date of such sale or transfer, notify the secretary of state thereof upon a blank furnished promptly by him for that purpose, stating the name and business address of the previous owner, if known, the number under which such motor vehicle is registered and the name, residence, including county and business address, of the vendee. Upon filing such statement duly verified such vendee shall pay to the secretary of state a fee of one dollar, and upon receipt of such statement and fee the secretary of state shall file such statement in his office and note upon the registration book or index such change in ownership. A vendee may operate such motor vehicle under the registration certificate issued to the vendor for a period of ten days from the date endorsed thereon by the vendor. At the expiration of said period of ten days the said registration shall be suspended and the operation of such motor vehicle thereunder is prohibited. It shall be unlawful for any person to deliver or offer to deliver or to accept or offer to accept a transfer of any motor vehicle unless there be produced and delivered to the vendee the certificate of registration issued for such vehicle endorsed as herein-

before required. A violation of this provision shall be a misdemeanor punishable by a fine not exceeding one hundred dollars or by imprisonment not exceeding sixty days, or by both, in the discretion of the court.

Amended by L. 1919, ch. 379.

**PENAL LAW, § 436-a.**

**Penal Law, § 436-a.—Defacing identification mark on motor vehicles.** A person who knowingly buys, sells, receives, disposes of, conceals or knowingly has in his possession any motor vehicle, as defined in section two hundred and eighty-one of the highway law, from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed for the purpose of concealment or misrepresenting the identity of the said motor vehicle, shall be guilty of a misdemeanor.

Added by L. 1917, ch. 708.

**§ 282-a. Auto trucks and trailers in excess of twenty-five thousand pounds.** After this section takes effect no person shall operate or drive on the public highways of the state outside of cities an auto truck or trailer having a combined weight of truck and load of more than twenty-five thousand pounds, but this section shall not apply to an auto truck or trailer heretofore registered pursuant to section two hundred and eighty-two of this chapter having a combined weight of truck and carrying capacity in excess of twenty-five thousand pounds during the period for which such auto truck or trailer shall have been registered or re-registered.

Added by L. 1918, ch. 533.

**§ 283. Distinctive number; form of number plates.** 1. Distinctive number must be carried on motor vehicles. No person shall operate or drive a motor vehicle on the public highways of this state after the first day of August, nineteen hundred and ten, unless such vehicle shall have a distinctive number assigned to it by the secretary of state and a number plate issued by the secretary of state with a number, and other identification matter if any, corresponding to that of the certificate of registration conspicuously displayed, one on the front and one on the rear of such vehicle, each securely fastened so as to prevent the same from swinging.

2. Number plates to be changed annually. Such number plates shall be of a distinctly different color each year, and there shall

be at all times a marked contrast between the color of the number plates and that of the numerals or letters thereon.

3. Form of number plate. Such number plate shall be of metal, at least six inches wide and not less than fifteen inches in length, on which there shall be the initials "N. Y.," and there shall be the distinctive number assigned to the vehicle set forth in numerals four inches long, each stroke of which shall be at least five-eighths of an inch in width. No vehicle shall display the number plates of more than one state at a time, nor shall any plate be used other than those issued by the secretary of state.

Amended by L. 1911, ch. 491 and L. 1917, ch. 174.

4. Provisions relating to trailers. No person shall operate or drive a motor vehicle drawing a trailer on the public highways of the state after the first day of August, nineteen hundred and seventeen, unless such trailer shall have a distinctive number assigned to it by the secretary of state and a number plate issued by such secretary with a number corresponding to that of the certificate of registration displayed and fastened in the manner provided for number plates on a motor vehicle, nor unless such person shall also have with him the certificate of registration of such trailer. Such certificate shall be exhibited on demand to any peace officer or representative of the secretary of state. The provisions of subdivisions three and four of this section relating to number plates for a particular motor vehicle shall apply to number plates for any such trailer, except that the word "trailer" shall also appear on such plates.

Added by L. 1917, ch. 727.

§ 284. Registration and number plates for manufacturers and dealers. 1. Every person, firm, association or corporation manufacturing or dealing in motor vehicles, may, instead of registering each motor vehicle so manufactured or dealt in, apply to the secretary of state for a single registration as manufacturer or dealer, as the case may be, and for number plates. The application shall be upon a blank to be furnished by the secretary of state, and shall be verified. It shall contain a brief description of each style or type of motor vehicle manufactured or dealt in by the applicant, including the character of the motor power stated in figures of horse power in accordance with the rating established by the Society of Automobile Engineers, and if an auto truck the combined weight and carrying capacity and if a motor vehicle adapted

specially for use as an omnibus the seating capacity, and the name and residence, including county and business address, of such manufacturer or dealer. The application shall be accompanied with the payment of a registration fee of fifteen dollars. Two number plates of the same kind shall constitute a set, and the fee for each set shall be five dollars; except that the first set of number plates shall be furnished without the payment of any fee in addition to the registration fee. The application shall be filed and registered in the office of the secretary of state in the same manner as provided in this chapter for the registration of a motor vehicle. The secretary of state shall thereupon assign a distinctive manufacturer's or dealer's registration number to the applicant and issue to the applicant a certificate of such registration with and for each separate set of number plates. Each certificate shall, in addition to the general registration number, recite any and all distinctive words, numbers or marks on the set of plates for which such certificate is issued. The secretary of state shall also promptly deliver to the applicant, at a place within the state to be designated by him in the application, the set or sets of number plates to which he is entitled. The applicant shall be provided with the one set furnished with his application and such additional sets, not exceeding four, for which he shall have paid the fees above provided. Each number plate shall be of metal, and the manufacturer's or dealer's general registration number shall be set forth thereon together with the initials "N. Y." The size of a manufacturer's or dealer's plate and of the numerals of such general registration number shall be the same as for a number plate described in section two hundred and eighty-three. All of such plates may contain such other identification matter as the secretary of state may deem proper. The provisions of subdivision two of section two hundred and eighty-three shall apply to such number plates. Additional number plates, in sets, with the corresponding certificates, may be obtained from the secretary of state at any time, upon the payment of the fee above provided; but the secretary of state may limit the total number of dealers' plates to be issued to any particular dealer in excess of five. A duplicate of any manufacturer's or dealer's number plate, in case of loss or destruction, which fact shall be proven by the affidavit of the manufacturer or dealer, may be obtained from the secretary of state for two dollars and fifty cents.

2. Except as otherwise provided in the next section, no person shall operate or drive, or cause to be operated or driven, on the public highways a motor vehicle to which any such manufacturer's or dealer's number plates are attached unless the manufacturer or dealer is the owner or entitled to the possession of such vehicle.

3. Registration under this section shall be renewed and new plates procured annually, to take effect on the first day of February of each year. All registrations under this section, including original registrations made after February first of any year, shall expire on the thirty-first day of January following the time the registration takes effect.

4. The privileges of this section shall not extend to any motor vehicle operated or driven by a manufacturer or dealer for pleasure purposes or for private use or for hire.

Amended by L. 1911, ch. 491, and L. 1917, ch. 174.

§ 284-a. **Limited use of dealer's number plates by vendee.** Upon the sale of a motor vehicle by registered dealer, the vendee shall be allowed to operate the same upon the public highways for the period of five days after taking possession thereof, without carrying number plates issued upon a registration under section two hundred and eighty-two, if the motor vehicle shall have attached thereto and displayed thereon, in the manner provided in section two hundred and eighty-three, a set of dealer's number plates issued to such dealer under section two hundred and eighty-four, and if a proper application for registration and number plates for such vehicle under the provisions of section two hundred and eighty-two shall have been mailed or presented to the secretary of state, accompanied with payment of the required fee, within twenty-four hours after he has taken possession thereof.

No person shall operate or drive upon the public highways any motor vehicle on which is fastened or displayed any such dealer's number plates after a sale of such vehicle by the dealer except in compliance with the foregoing provisions.

A dealer who sells a motor vehicle shall not deliver to or permit to be taken by the vendee any such number plates without first mailing to the secretary of state a verified statement, upon a blank to be furnished by him, setting forth the following facts: A description, by general and distinctive numbers and characters thereon, of the plates and certificate to be loaned; the name and residence, including county and business address, of the vendee

of the motor vehicle; a brief description of the motor vehicle sold, including the name of the manufacturer and factory number; the character and amount of the motive power stated in figures of horse power in accordance with the rating established by the Society of Automobile Engineers, or, if it be an auto truck, the combined weight of the truck and carrying capacity. The dealer shall also state whether he has knowledge or is informed that the motor vehicle is to be used as an omnibus, and if he states that he has knowledge or information that it is to be so used he shall also specify the seating capacity of the motor vehicle sold.

A vendee to whom number plates are delivered or by whom they are held under the provisions of this section shall return the same, and the accompanying registration certificate, to the dealer before the expiration of six days after he took possession of the motor vehicle purchased. If number plates so delivered or held, or such certificate, are not returned within the time above limited, the dealer shall immediately notify the secretary of state of that fact by mail describing the plates according to the general and distinctive numbers and characters thereon.

Added by L. 1917, ch. 174.

§ 285. **Exemption of nonresident owners.** The provisions of the foregoing sections relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a nonresident of this state, other than a foreign corporation doing business in this state, provided that the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory or federal district of his residence relative to registration of motor vehicles and the display of registration numbers thereon, and shall conspicuously display his registration numbers as required thereby. The provisions of this section, however, shall be operative as to a motor vehicle owned by a nonresident of this state only to the extent that under the laws of the foreign country, state, territory or federal district of his residence like exemptions and privileges are granted to motor vehicles duly registered under the laws of and owned by residents of this state.

§ 286. **Signaling and other devices; signals; rules of the road.**  
1. Every motor vehicle, operated or driven upon the public highways of the state, shall be provided with adequate brakes in good working order and sufficient to control such vehicle at all times

when the same is in use, and a suitable and adequate horn or other device for signaling.

2. Every motor vehicle, driven or operated upon the public highways of the state during the period from one-half hour after sunset to one-half hour before sunrise, shall display when running at least two lighted lamps on the front, one on each side, of approximately equal power, not exceeding twenty-four candle power, unless a greater candle power shall be prescribed as provided by subdivision six, and one lighted lamp on the rear of such vehicle, which shall also display a red light visible from the rear. The rays of such rear light shall shine upon the number plate carried on the rear of such vehicle in such manner as to render the numerals thereon legible for at least fifty feet in the direction from which the motor vehicle is proceeding. The front lights shall be so arranged, adjusted and operated, as to avoid dangerous glare or dazzle, and so that no dangerous or dazzling light, projected to the left of the axis of the vehicle when measured seventy-five feet or more ahead of the lamps, shall rise above forty-two inches on the level surface on which the vehicle stands. They shall also give sufficient side illumination to reveal any person, vehicle or substantial object ten feet to both sides of said vehicle, at a point ten feet ahead of the lamps. If, in addition to headlights, any such motor vehicle is equipped with any auxiliary light, projecting device or devices, other than the rear light, such auxiliary lights shall be subject to all the restrictions of this section.

3. Except as otherwise provided in this section, such front lights shall be visible at least two hundred and fifty feet in the direction in which the motor vehicle is proceeding, and, when the vehicle is proceeding on a street or highway not so lighted as to reveal any person, vehicle or substantial object on such street or highway straight ahead of such motor vehicle for a distance of at least two hundred feet, such front lights shall be sufficient to reveal any person, vehicle or substantial object on the road straight ahead of such motor vehicle for a distance of at least two hundred feet. This subdivision shall not apply to the motor trucks described in subdivision four of this section.

4. Such front lights on motor trucks of two tons carrying capacity or over, which are so governed or mechanically constructed or controlled that they cannot exceed a speed of fifteen

miles per hour, shall be visible at least two hundred feet, in the direction in which the motor vehicle is proceeding, and when the vehicle is proceeding on a street or highway not so lighted as to reveal any person, vehicle or substantial object on the street or highway straight ahead of such motor vehicle for a distance of at least two hundred feet, such front lights shall be sufficient to reveal any person, vehicle or substantial object on the road straight ahead for a distance of seventy-five feet.

5. Motor vehicles when standing upon the street or highway must display two lights in front and a red light in the rear which shall be visible from a point at least one hundred feet distant, provided, however, upon the end of the motor vehicle against the curb and where such lights are dispensed with by law or ordinance no light is required.

6. Any person may submit to the secretary of state a device for controlling the front lights of motor vehicles so that they shall comply with the provisions of this section while the vehicle is proceeding, together with an application that such device be tested as prescribed by this section. Such applicant shall pay to the secretary of state a fee of fifty dollars. Thereupon the secretary of state shall upon notice to the manufacturer thereof, submit such device upon such uniform specifications as he may from time to time prescribe and promulgate to the United States bureau of standards or to any duly qualified testing laboratory not interested, directly or indirectly, in any lamps or headlighting apparatus or to a similarly disinterested qualified technical expert or experts from the physical laboratory of a university or technical school within the state of New York, under the jurisdiction of the university of the state of New York, with a request that it be tested as to its compliance with the provisions of this section; and the secretary of state may also submit such device to such practical road test as he deems proper. Upon notice from such bureau, laboratory or technical expert or experts that such test has been made and that such device when properly applied substantially complies with the provisions of this section, and suggesting the maximum candle power to be used therewith, the secretary of state may issue a certificate to the applicant describing the device and certifying that such test has been made and that the device when so applied complies with the provisions of this section and prescribing the said maximum candle power to

be used therewith. The expense of such test shall be paid from the fee collected from the applicants, and the balance of such fee, if any, shall be paid into the state treasury.

7. Any person, firm or corporation who may be dissatisfied with the findings of such testing laboratory, expert or experts, shall have the right of appeal to the United States bureau of standards upon payment of the same fee hereinabove prescribed whose decision shall be final.

8. A person operating or driving a motor vehicle shall, on signal by raising the hand, from a person riding, leading or driving a horse or horses or other draft animals, bring such motor vehicle immediately to a stop, and if traveling in the opposite direction, remain stationary so long as may be reasonable to allow such horse or animal to pass, and, if traveling in the same direction, use reasonable caution in thereafter passing such horse or animal; provided that, in case such horse or animal appears badly frightened or the person operating such motor vehicle is so signaled to do, such person shall cause the motor of such vehicle to cease running so long as shall be reasonably necessary to prevent accident and insure the safety of others. In approaching or passing a car of a street railway which has been stopped to allow passengers to alight or embark, the operator of every motor vehicle shall slow down and if it be necessary for the safety of the public he shall bring said vehicle to a full stop. Upon approaching a pedestrian who is upon the traveled part of any highway and not upon a sidewalk, and upon approaching an intersecting highway or a curve or a corner in a highway where the operator's view is obstructed, every person operating a motor vehicle shall slow down and give a timely signal with his bell, horn or other device for signaling.

9. Whenever a person operating a motor vehicle shall meet on a public highway any other person riding or driving a horse or horses or other draft animals or any other vehicle, the person so operating such motor vehicle shall seasonably turn the same to the right of the center of such highway so as to pass without interference. Any such person so operating a motor vehicle shall, on overtaking any such horse, draft animal or other vehicle, pass on the left side thereof, and the rider or driver of such horse, draft animal or other vehicle shall, as soon as practicable, turn to the right so as to allow free passage on the left. Any such person so operating a motor vehicle shall,

at the intersection of public highways, keep to the right of the intersection of the centers of such highways when turning to the right and pass to the right of such intersection when turning to the left.

Amended by L. 1917, ch. 785, and L. 1918, ch. 540.

10. Every motor truck, omnibus and all motor commercial vehicles of one ton capacity or more, operating upon the public highways outside of cities of the first and second class, shall be equipped with a mirror or other reflecting device so adjusted or adjustable that the operator of such truck shall have a clear and full view of the road and condition of traffic behind such truck.

Added by L. 1919, ch. 378.

§ 286-a. **Transparently illuminated rear plates.** Instead of the ordinary rear number plate required by section two hundred and eighty-six of this chapter, a rear plate may be used on motor vehicles other than motor trucks, so constructed as to permit of the attachment and use therewith of a standard illuminating device for transparently illuminating such plate, but otherwise conforming to the requirements of section two hundred and eighty-six of this chapter, if the numerals on such plate are legible for a distance of at least one hundred feet in the day time and for a like distance when transparently illuminated at night. Any person or corporation may submit to the secretary of state a device for transparently illuminating such a rear license plate. If the secretary of state be satisfied that the device so submitted can be readily attached and is adequate to so transparently illuminate such plate that the numerals thereon will be legible for a distance of at least one hundred feet, he may approve the same by a certificate filed in his office, and such device shall thereupon be known as a standard illuminating device. Every illuminating device used for the purpose of illuminating a rear plate as authorized by this section shall be marked or stamped "approved by the secretary of state." As soon as one or more of such standard illuminating devices shall have been approved by the secretary of state he shall, upon application, when the number plates for a current year are issued, issue a rear number plate as provided by this section in substitution for the ordinary rear number plate issued by him. He shall also, upon application, issue a rear number plate as provided by this section, in exchange for a rear number plate theretofore issued, upon payment of the actual cost of such new plate. The provisions of section two hundred and eighty-six of this chap-

ter that the rays of the rear lamp shall shine upon the number plate carried upon the rear of a motor vehicle in such manner as to render the numerals thereon legible for at least fifty feet in the direction from which the motor vehicle is proceeding shall not apply to a motor vehicle equipped with a rear number plate transparently illuminated by a standard illuminating device, as authorized by this section.

Added by L. 1918, ch. 579.

**§ 287. Speed permitted.** Every person operating a motor vehicle on the public highway of this state shall drive the same in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person; provided, that a rate of speed in excess of thirty miles an hour for a distance of one-fourth of a mile shall be presumptive evidence of driving at a rate of speed which is not careful and prudent.

**§ 288. Local ordinances prohibited.** Except as herein otherwise provided, local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring from any owner, operator or chauffeur to whom this article is applicable any tax, fee, license or permit for the use of the public highways, or excluding any such owner, operator or chauffeur from the free use of such public highways, excepting such driveway, speedway or road as has been or may be expressly set part by law for the exclusive use of horses and light carriages or in any other way, respecting motor vehicles or their speed upon or use of the public highways; and no ordinance, rule or regulation contrary to or in anywise inconsistent with the provisions of this article, now in force or hereafter enacted, shall have any effect; provided, however, that the power given to local authorities to regulate vehicles offered to the public for hire, and processions, assemblages or parades in the streets or public places, and all ordinances, rules and regulations which may have been or which may be enacted in pursuance of such powers shall remain in full force and effect; and provided, further, that local authorities may set aside for a given time a specified public highway for speed contests or races, to be conducted under proper restrictions for the safety of the public; and provided, further, that local authorities may exclude motor vehicles from any cemetery or grounds used for the burial of the dead, and may by general rule, ordinance or regulation exclude motor vehicles used solely for commercial purposes from any park

or part of a park system where such general rules, ordinance or regulation is applicable equally and generally to all other vehicles used for the same purposes, and provided further that nothing in this article contained shall impair the validity or effect of any ordinances, regulating the speed of motor vehicles, or of any traffic regulations with regard to the operation of motor vehicles, heretofore or hereafter made, adopted or prescribed pursuant to law in any city of the first class or in any city of the second class in a county adjoining a city of the first class; provided, further, that the local authorities of other cities and incorporated villages may limit by ordinance, rule or regulation the speed of motor vehicles on the public highways, such speed limitation not to be in any case less than one mile in four minutes, and the maintenance of a greater rate of speed for one-eighth of a mile shall be presumptive evidence of driving at a rate of speed which is not careful and prudent, and on further condition that each city or village shall have placed conspicuously on each main public highway where the city or village line crosses the same and on every main highway where the rate of speed changes, signs of sufficient size to be easily readable by a person using the highway, bearing the words, "City of ....." or "Incorporated village of .....", "Slow down to ..... miles" (the rate being inserted), and also an arrow pointing in the direction where the speed is to be reduced or changed, and also on further condition that such ordinance, rule or regulation shall fix the punishment for violation thereof, which punishment shall, during the existence of the ordinance, rule or regulation, supersede those specified in subdivision two of section two hundred and ninety of this chapter but, except in cities of the first or second class shall not exceed the same. Official copies of all local ordinances passed under the provisions of this subdivision shall be filed with the secretary of state at least thirty days before they shall respectively take effect and all such local ordinances shall be printed in pamphlet form and issued at regular intervals by the secretary of state.

Amended by L. 1915, ch. 487, L. 1916, ch. 579 and L. 1917, ch. 769.

§ 289. License of operators and chauffeurs; renewals. 1. License of operators or chauffeurs. Application for license to operate motor vehicles, as an operator or chauffeur, may be made, by mail or otherwise, to the secretary of state or his duly authorized agent upon blanks prepared under his authority

in such form and with such proof of the applicant's fitness as the secretary of state shall in his discretion determine. The secretary of state shall appoint examiners and cause examinations to be held at convenient points throughout the state as often as may be necessary. Such application, if for a chauffeur's license, shall be accompanied by a photograph of the applicant in such numbers and forms as the secretary of state shall prescribe, said photograph to be taken within thirty days prior to the filing of said application and to be accompanied by the fee provided herein. An owner of a motor vehicle or a member of his immediate family shall be granted an operator's license, subject to this article. Before an operator's or chauffeur's license is granted, the applicant shall pass such examination as to his qualifications as the secretary of state shall require. No operator's or chauffeur's license shall be issued to any person under eighteen years of age. To each person shall be assigned some distinguishing number or mark, and the license issued shall be in such form as the secretary of state shall determine; it may contain special restrictions and limitations concerning the type of motor power, horse power, design and other features of the motor vehicles which the licensee may operate; it shall contain the distinguishing number or mark assigned to the licensee, his name, place of residence and address, a brief description of the licensee for the purpose of identification and the photograph of the licensee if a chauffeur. Such distinctive number or mark shall be of a distinctly different color each year and in any year shall be of the same color as that of the number plates issued for that year. The secretary of state shall furnish to every chauffeur so licensed a suitable metal badge with the distinguishing number or mark assigned to him thereon without extra charge therefor. This badge shall thereafter be worn by such chauffeur affixed to his clothing in a conspicuous place, at all times while he is operating or driving a motor vehicle upon the public highway. Said badge shall be valid only during the term of the license of the chauffeur to whom it is issued as aforesaid. Every person licensed to operate motor vehicles as aforesaid shall indorse his usual signature on the margin of the license, in the space provided for the purpose, immediately upon receipt of said license, and such license shall not be valid until so indorsed. Every application for a chauffeur's license filed under the provisions of this section shall be sworn to

and shall be accompanied by a fee of five dollars. Every application for an operator's license shall be sworn to and be accompanied by a fee of two dollars. A license granted hereunder at any time shall expire on the ensuing thirty-first day of January. A license in force when this section, as hereby amended, takes effect shall be deemed a license hereunder. Failure by an operator or chauffeur to exhibit his license to any magistrate, motor vehicle inspector, police officer, constable or other competent authority, shall be presumptive evidence that said person is not duly licensed under this article.

2. Operators' and chauffeurs' licensed registration book. Upon the receipt of such an application, the secretary of state shall thereupon file the same in his office, and register the applicant in a book or index which shall be kept in the same manner as the book or index for the registration of motor vehicles, and when the applicant shall have passed the examination provided for in the preceding section, the number or mark assigned to such applicant together with the fact that such applicant has passed such examination shall be noted in said book or index.

Amended by L. 1919, ch. 472.

3. Unauthorized possession or use of license or badge. No operator or chauffeur having been licensed as herein provided shall voluntarily permit any other person to possess or use his license or badge, nor shall any person while operating or driving a motor vehicle use or possess any license or badge belonging to another person, or a fictitious license or badge.

4. Unlicensed operators or chauffeurs cannot drive motor vehicle. An operator's license shall not entitle a person to drive a motor vehicle as an employee or for hire. No person shall operate or drive a motor vehicle upon a public highway of this state after the first day of August, nineteen hundred and seventeen, unless such person shall have complied in all respects with the requirements of this section and of section two hundred and eighty-two of this act; provided, however, that a nonresident owner, operator or chauffeur, who has registered under provisions of law of the foreign country, state, territory or federal district of his residence substantially equivalent to the provisions of this article, shall be exempt from license under this section; and provided, further, he shall wear the badge or carry the license certificate assigned to him in the foreign country, state, territory or federal district of his residence in the manner provided in this section.

5. **Renewal.** Such license shall be renewed annually, such renewal to take effect on the first day of February of each year. The secretary of state may refuse to issue or renew a license if he deems the applicant not qualified to receive such license, but the refusal of the secretary of state may be reviewed by writ of certiorari. For renewals to take effect on and after February first, nineteen hundred and eighteen, the fee shall be two dollars for a chauffeur's license and one dollar for an operator's license.

Amended by L. 1911, ch. 401 and L. 1917, ch. 769.

§ 290. **Punishment for violation; procedure.** 1. The violation of any of the provisions of sections two hundred and eighty-two, two hundred and eighty-three, two hundred and eighty-four, two hundred and eighty-four-a, two hundred and eighty-six, and two hundred and eighty-nine of this article shall constitute a misdemeanor punishable by a fine not exceeding fifty dollars.

2. The violation of any of the provisions of section two hundred and eighty-seven of this article shall constitute a misdemeanor punishable by a fine not exceeding one hundred dollars.

3. **Punishment for operating motor vehicle while in an intoxicated condition; for going away without stopping after accident and making himself known.** Whoever operates a motor vehicle while in an intoxicated condition shall be guilty of a misdemeanor. Any person operating a motor vehicle who, knowing that injury has been caused to a person or damage caused to a vehicle, due to the culpability of the person operating such motor vehicle, or to accident, leaves the place of said injury or accident, without stopping and giving his name, residence, including street and street number, and license number to the injured party, or to a police officer, or in case no police officer is in the vicinity of the place of said injury or accident, then reporting the same to the nearest police station, or judicial officer, shall be guilty of a felony punishable by a fine of not more than five hundred dollars or by imprisonment for a term not exceeding two years, or by both such fine and imprisonment; and if any person be convicted a second time of either of the foregoing offenses, he shall be guilty of a felony punishable by imprisonment for a term of not less than one year and not more than five years. A conviction of a violation of this subdivision shall be reported forth with by the trial court or the clerk thereof to the secretary of

state, who shall upon recommendation of the trial court suspend the license of the person so convicted or if he be an owner the certificate of registration of his motor vehicle and, if no appeal therefrom be taken, or if an appeal duly taken be dismissed, or the judgment affirmed, and upon notice thereof by said clerk, the secretary of state shall revoke such license or in the case of an owner the certificate of registration of his motor vehicle, and shall order the license or certificate of registration delivered to the secretary of state, and shall not reissue to him said license or certificate of registration or any other license or certificate of registration unless the secretary of state in his discretion, after an investigation or upon a hearing, decides to reissue or issue such license or certificate.

4. Any operator or chauffeur operating a motor vehicle while his license is suspended or revoked shall be guilty of a misdemeanor.

5. Any person who operates any motor vehicle while a certificate of registration of motor vehicle issued to him is suspended or revoked shall be guilty of a misdemeanor.

6. Upon a third or subsequent conviction of a chauffeur or operator for a violation of the provisions of section two hundred and eighty-seven, or an ordinance, rule or regulation regulating speed of motor vehicles under section two hundred and eighty-eight, the secretary of state, upon the recommendation of the trial court, shall forthwith revoke the license of the person so convicted and no new license shall be issued to such person for at least six months after the date of such conviction nor thereafter except in the discretion of the said secretary of state.

7. Any person making a false statement in the verified application for registration, or in an application for a license or in any proof or statement in writing in connection therewith, or who shall deceive or substitute or cause another to deceive or substitute in connection with any examination hereunder, shall be guilty of a misdemeanor.

Amended by L. 1919, ch. 623.

8. Any person violating any of the provisions of any section of this article, which violation is stated separately to be a misdemeanor, is punishable by imprisonment for not more than one year or by a fine of not more than five hundred dollars, or by both, and for a violation of any other provision of this article, for which violation no punishment has been specified, shall be guilty of a

misdemeanor punishable by a fine of not exceeding twenty-five dollars.

9. Certifying conviction to the secretary of state. Upon the conviction of any person for a violation of any of the provisions of this article the trial court or the clerk thereof shall immediately certify the facts of the case, including the name and address of the offender, the judgment of the court and the sentence imposed, to the secretary of state who shall enter the same either in the book or index of registered motor vehicles or in the book or index of registered chauffeurs, as the case may be, opposite the name of the person so convicted, and in the case of any other person, in a book or index of offenders to be kept for such purpose. If any such conviction shall be reversed upon appeal therefrom, the person whose conviction has been so reversed may serve on the secretary of state a certified copy of the order of reversal, whereupon the secretary of state shall enter the same in the proper book or index in connection with the record of such conviction.

10. Release from custody, bail, et cetera. In case any person shall be taken into custody charged with a violation of any of the provisions of this article, he shall forthwith be taken before the nearest magistrate, captain, lieutenant, clerk of the court or acting lieutenant who shall have the power of a magistrate and be entitled to an immediate hearing or admission to bail, and if such hearing cannot then be had, be released from custody on giving a bond or undertaking, executed by a fidelity or surety company authorized to do business in this state, or other bail in the form provided by section five hundred and sixty-eight of the code of criminal procedure, such bond or undertaking to be in an amount not exceeding one hundred dollars, if the charge be for a misdemeanor, except as herein provided where the charge is a violation of subdivision three of section two hundred and ninety of this article, for his appearance to answer for such violation at such time and place as shall then be indicated. In case a person is taken into custody charged with being guilty of a felony in violation of any of the provisions of this article, such bond or undertaking shall be in an amount not less than one thousand dollars. On giving his personal undertaking to appear to answer any such violation at such time and place as shall then be indicated, secured by the deposit of a sum of money equal to the amount of such bond or undertaking, or in lieu thereof, in case

the person taken into custody is the owner, by leaving the motor vehicle, or in case such person taken into custody is not the owner, by leaving the motor vehicle as herein provided with a written consent given at the time by the owner who must be present, with such officer; or in case such person is taken into custody because of a violation of any of the provisions of this article other than on a charge of violating any of the provisions of subdivision three of section two hundred and ninety and such officer is not accessible, be forthwith released from custody on giving his name and address to the person making the arrest and depositing with such arresting officer the sum of one hundred dollars, or in lieu thereof, in case the person taken into custody is the owner, by leaving the motor vehicle, or, in case such person taken into custody is not the owner, by leaving the motor vehicle with a written consent at the time by the owner who must be present; provided that, in any such case, the officer making the arrest shall give a receipt in writing for such sum or vehicle deposited and notify such person to appear before the most accessible magistrate, describing him, and specifying the place and hour. In case such bond or undertaking shall not be given or deposit made by the owner or other person taken into custody, the provisions of law in reference to bail, in case of misdemeanor, shall apply. Where the charge is a violation of subdivision three of section two hundred and ninety of this article, the provisions of law in reference to bail in cases of a misdemeanor or a felony as the case may be shall apply exclusively.

11. Holding defendant to answer where magistrate has not jurisdiction to try offender; admitting to bail. In case the magistrate before whom any person shall be taken, charged with the violation of any provision of this article, shall not have jurisdiction to try the defendant, but shall hold the defendant to answer as provided by section two hundred and eight of the code of criminal procedure, he shall admit such defendant to bail upon his giving a surety company's bond or undertaking to appear to answer for such violation at such time and place as shall then be indicated, or upon his giving a written undertaking in the form provided in section five hundred and sixty-eight of the code of criminal procedure in a sum not exceeding one hundred dollars, except that in a case where the defendant is charged with a violation of any of the provisions of subdivision three of section two hundred and ninety of this article, the provisions of law in refer-

ence to bail in cases of a misdemeanor or a felony as the case may be shall apply exclusively.

12. Disposition and return of bail. Such bail as may be deposited as herein provided shall be held by the officer accepting the same or the clerk of the court. Upon the person who has been taken into custody and given security or bail for his appearance surrendering himself for trial and upon the conclusion of such trial the court shall issue to the defendant an order upon the magistrate or clerk of the court or other officer authorized to accept bail to return or deliver back said security or bail as was given.

13. A conviction of violation of any provision of this article shall not be a bar to a prosecution for an assault or for a homicide committed by any person in operating a motor vehicle.

Amended by L. 1913, ch. 1, L. 1917, ch. 174, L. 1917, ch. 769, and L. 1918, ch. 549.

§ 290-a. Suspension and revocation of a license of operator or chauffeur. The secretary of state may suspend or revoke any certificate of registration, or any license, issued to any person under the provisions of this article for any of the following causes: a. For a third or subsequent violation of the speed provisions of this article or ordinance or regulation made by competent local authority within one calendar year. b. Upon the conviction of the holder of a license of a felony under this act. c. Because of some physical or mental disability of the holder, or the disability of the holder by reason of intoxication or the use of drugs. d. Because of the gross negligence of the operator whereby person or property has been injured. e. For going away without stopping and giving his name and address after causing injury to any person or damage to any vehicle. f. Operating a motor vehicle in a manner showing a reckless disregard for life or property of others. Before revoking such certificate or license, the holder thereof shall be entitled to a hearing before the secretary of state or his deputy, upon ten days' notice in writing. The secretary of state may likewise upon notice aforesaid revoke or suspend the license of any operator or chauffeur for any of the foregoing reasons upon the recommendation of any judge or city magistrate. On the revocation of a certificate of registration or license to operate, neither the license nor the certificate shall be reissued unless upon investigation the secretary of state shall determine that the operator may again be legally permitted to operate. Upon the conviction of a person for an offense involving a third violation of section two hun-

dred and eighty-seven of this article, within one calendar year or of operating a motor vehicle while under the influence of intoxicating liquors or drugs, or of injuring a person or property by reason of gross negligence in operating, or of going away without stopping or giving his name and address after causing injury to any person or damage to any vehicle, the secretary of state may immediately revoke the license of the person so convicted and if any person convicted of any such offense shall appeal from the decision of such trial court, the secretary of state may suspend forthwith the license of the person so convicted and appealing and may order the license delivered to him and shall not reissue the same unless such person is acquitted upon such appeal, or unless the secretary of state in his discretion shall decide that such license shall be reissued. Whenever any license or certificate shall have been revoked under the provisions of this article no new license or certificate shall be issued unless by the secretary of state to such person until after thirty days from the date of such revocation, nor thereafter except in the discretion of the secretary of state. Notice of revocation and suspension of any license or certificate of registration shall be transmitted forthwith by the secretary of state to the chief of police of the city or prosecuting officer of the locality in which the person whose license or certificate of registration so revoked or suspended, resides.

Added by L. 1917, ch. 769, and Amended by L. 1919, ch. 472.

§ 290-b. **Certificate by magistrate.** Upon conviction of any operator or chauffeur of a violation of this article, for any reason specified in the last preceding section as a ground for suspension or revocation of a license of an operator or chauffeur, the magistrate or other officer before whom such operator or chauffeur has been convicted, shall forthwith transmit to the secretary of state a certificate stating in detail the conviction and the reasons for such conviction, for such action as the secretary of state may determine under section two hundred and ninety-a of this act. Such certificate shall be presumptive evidence of the conviction of such operator or chauffeur.

Added by L. 1917, ch. 769.

§ 291. **Disposition of registration fees; fines and penalties.**  
1. On the first day of each month or within ten days thereafter all fines, penalties or forfeitures collected for violations of any of

the provisions of this article or of any act in relation to the use of the public highways by motor vehicles now in force or hereafter enacted, under the sentence or judgment of any court, judge, magistrate or other judicial officer having jurisdiction in the premises, shall be paid over by such court, judge, magistrate or other judicial officer to the treasurer of the state, with a statement accompanying the same, setting forth the action or proceeding in which such moneys were collected, the name and residence of the defendant, the nature of the offense, and the fine, penalty, sentence or judgment imposed. On the first day of each month or within ten days thereafter, every judge, magistrate or clerk of a court having jurisdiction of the violation of any of the provisions of this article, shall make and forward to the treasurer of the state, a verified report of all criminal actions or proceedings instituted or tried before him or it during the preceding calendar month for violation of any of the provisions of this article, which report shall set forth the name and address of the defendants, the nature of the offenses and the fines and penalties collected or imposed by such court, judge, magistrate or judicial officer, which report shall be open to inspection during reasonable business to any citizen of the state. On or before the first day of February of each year, the treasurer shall transmit to each branch of the legislature a statement showing the amount of the receipts under this article during the preceding fiscal year paid into the state treasury.

2. The secretary of state shall deposit all registration fees collected by him under this article in a responsible bank, banking house or trust company in the city of Albany, which shall pay the highest rate of interest to the state for such deposit, to the credit of the secretary of state on account of the motor vehicle law. Every such bank, banking house or trust company shall execute and file in his office an undertaking to the state, in the sum, and with such sureties, as are required and approved by the secretary of state and comptroller for the safe keeping and prompt payment on legal demand therefor of all such moneys held by or on deposit in such bank, banking house or trust company, with interest thereon on daily balances at such rate as the secretary of state and comptroller may fix. Every such undertaking shall have endorsed thereon or annexed thereto the approval of the attorney-general as to its form. The secretary of state shall on the

first day of each month make a verified return to the state treasurer of all registration fees received by him under this article during the preceding calendar month, stating from what county received and by whom and when paid.

3. The secretary of state shall on or before the tenth day of each month pay to the state treasurer seventy-five per centum of the balance to his credit in such bank, banking house or trust company, on account of registration fees collected under this article, at the close of business on the last day of the preceding month; and from the money so deposited shall pay to the treasurer of each county twenty-five per centum of the registration fees collected from residents of such county during the preceding calendar month. In the city of New York such payment shall be made through the chamberlain of such city on account of all counties included therein.

4. All moneys paid into the state treasury pursuant to this article shall be appropriated and used for the maintenance and repair of the improved roads of the state, under the direction of the state commissioner of highways. All money received by the chamberlain of the city of New York, pursuant to this article, shall be paid into the treasury of the city to the credit of the general fund. All moneys received by the county treasurer of any county pursuant to this article, shall be used for the permanent construction or improvement of town highways only in such county as defined by subdivision four of section three of this chapter. The county treasurer shall, upon receipt of such moneys, keep an accurate record thereof, and shall furnish the board of supervisors of the county, upon request by it, with a certified statement of such receipts. The board of supervisors of the county shall, at a regular or special meeting and by a majority vote, allot such moneys to one or more of the towns within such county, and shall by resolution appropriate for the use of such town or towns the money so allotted. A certified copy of such resolution shall be filed with the county treasurer of such county, with the state commission of highways and with the town clerk of the town to which such allotment is made. The places and the manner in which such moneys shall be expended shall be determined by the town board and the town superintendent subject to the approval of the state commission of highways in accordance with the provisions of section one hundred and five of this chapter, which shall also govern the method by which such moneys

shall be expended. Upon such approval by the commission and after written notice thereof has been filed by it with the county treasurer, and after the supervisor of the town to which such allotment is made has given a bond in accordance with the provisions of section one hundred and four of this chapter, the county treasurer shall pay to the supervisor of such town or towns the amount to which each is entitled as determined and indicated by such resolutions. A statement of the receipts and expenditures of such moneys shall be included in the report required by section one hundred and seven of this chapter. The provisions of section one hundred and eight of this chapter shall apply as to the method of keeping accounts, the form, blanks and orders used, and the filing of records in the town clerk's office.

Amended by L. 1916, ch. 577, and L. 1918, ch. 325.

§ 292. **Rates of toll on motor vehicles.** Where a different rate is not otherwise prescribed or permitted by law, any person or corporation maintaining a plankroad, turnpike road or bridge and authorized, or which shall be hereafter authorized, to receive tolls for the passage of vehicles over the same, may charge and receive for each and every motor vehicle propelled by any power other than animal power, passing over the same, a toll rate not greater than the maximum rate allowed by law to be charged and received for the passage of a vehicle drawn over such road or bridge by two animals, provided that for such motor vehicles designed to carry only two persons the rate of toll charged or received shall not exceed the maximum rate allowed by law to be charged and received for the passage of a vehicle drawn over such road or bridge, without a load, by a single animal.

§ 293. **Acts repealed.** All acts or parts of acts inconsistent with this article or contrary thereto are hereby expressly repealed

NOTE.—Chapter 174 of the Laws of 1917, amending subdivisions 3 and 4 of section 282, repealing subdivision 9 of section 282, amending sections 283 and 284, adding a new section 284-a, and amending subdivision 1 of section 290, shall take effect February 1, 1918, but registration of dealers or manufacturers and issuance of number plates under section 284 of the Highway Law, as amended by this act, for the year beginning on the 1st day of February, 1918, may be applied for within 60 days next preceding such day, and no registration of manufacturers or dealers for such year under section 284 of such law as in force prior to such day shall be applied for or made.

**ARTICLE XI-A.****Motor Cycles.****Section 300. Application of article.**

301. Definitions.

302. Registration of motor cycles; age of operator; fees; renewals.

303. Distinctive number; form of number plates.

304. Exemption of nonresident owners.

305. Signaling and other devices; signals; rules of the road.

306. Speed permitted.

307. Local ordinances prohibited.

308. Punishment for violation; procedure.

309. Disposition of registration fees; fines and penalties; reports of criminal actions or proceedings.

309-a Powers of inspector.

310. Acts repealed.

§ 300. **Application of article.** Except as herein otherwise expressly provided, this article shall be exclusively controlling:

1. Upon the registration, numbering and regulation of motor cycles;

2. On their use of the public highways, and

3. On the accessories used upon motor cycles and their incidents and the speed of motor cycles upon the public highways;

4. On the punishment for the violation of any of the provisions of this article.

§ 301. **Definitions.** The term "motor cycle" as used in this article, except where otherwise expressly provided, shall include all motor cycles. A motor cycle is a vehicle with two wheels, one following the other, propelled by other than muscular power, or such vehicle with a car attached to the side, front or rear and operated on one or more additional wheels. The term "local authorities" shall include all officers of counties, cities, boroughs, towns or villages, as well as all boards, committees and other public officials of such counties, cities, boroughs, towns or villages. The term "state" as used in this article, except where otherwise expressly provided, shall also include the territories and the federal districts of the United States. The term "owner" shall also include any person, firm, association or corporation renting a motor cycle or having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days. The term "public highway" shall include any highway, county road, state road, public street, avenue, alley, park, parkway or public place in

any county, city, borough, town or village, except any speedway which may have been or may be expressly set apart by law for the exclusive use of horses and light carriages.

**§ 302. Registration of motor cycles; age of operator; fees; renewals.** 1. Registration by owners. Every owner of a motor cycle which shall be operated or driven upon the public highways of this state shall, except as herein otherwise expressly provided, cause to be filed, by mail or otherwise, in the office of the secretary of state a verified application for registration on a blank to be furnished by the secretary of state for that purpose, containing: (a) A brief description of the motor cycle to be registered, including the name of the manufacturer and factory number of such vehicle; (b) the name, age, residence, including county and business address, of the owner of such motor cycle; (c) provided that, if such motor cycle is used or to be used solely for commercial purposes, the applicant shall so certify.

2. Age of operator. No person shall operate or drive a motor cycle who is under sixteen years of age.

3. Registration book. Upon the receipt of an application for registration of a motor cycle, as provided in this article, the secretary of state shall file such application in his office at Albany and such other places within the state of New York as he may designate and register such motor cycle or motor cycles, with the name, residence and business address of the owner, together with the facts stated in such application, in a book or index to be kept for the purpose, under the distinctive number assigned to such motor cycle by the secretary of state, which book or index shall be open to public inspection during reasonable business hours.

4. Certificate of registration. Upon the filing of such application and the payment of the fee hereinafter provided, the secretary of state shall assign to such motor cycle a distinctive number and, without expense to the applicant, issue and deliver in such manner as the secretary of state may select to the owner a certificate of registration, in such form as the secretary of state may prescribe, and a number plate at a place within the state of New York named by the applicant in his application. In the event of the loss, mutilation or destruction of any certificate of registration or number plate, the owner of a registered motor cycle may obtain from the secretary of state a duplicate thereof upon filing in the office of the secretary of state an affidavit showing such fact and the payment of a fee of fifty cents.

5. Times for registration and re-registration. Registration applied for on or before April first, nineteen hundred and sixteen, shall take effect on that date and certificates issued on such application or under any application made prior to January thirty-first, nineteen hundred and seventeen, shall expire on the latter date. Registration thereafter shall be renewed annually in the same manner and upon payment of the same annual fee as provided in this section for registration, to take effect on the first day of February, in each year beginning with such date in the year nineteen hundred and seventeen; and the certificates of registration issued thereunder or issued between any such dates shall expire on the succeeding thirty-first day of January.

6. Registration fees. The following fees shall be paid to the secretary of state upon the registration or re-registration of a motor cycle in accordance with the provisions of this article: Two dollars and fifty cents upon the registration of any motor cycle of whatever horse-power, provided that if a motor cycle is originally registered after August first in any year, the register fee for that year shall be one-half of the fee herein provided for. The provisions hereof with respect to the payment of registration fees shall not apply to motor cycles owned or controlled by the state, a city or county or any of the departments thereof, but in other respects shall be applicable.

7. Fees in lieu of taxes. The registration fees imposed by this article upon motor cycles shall be in lieu of all taxes, general or local, to which motor cycles may be subject.

8. Sale and registration by vendee. Upon the sale or transfer of a motor cycle registered in accordance with this section, the vendor shall immediately give notice thereof with the name and residence of the vendee to the secretary of state, and the vendee shall, within ten days after the date of such sale or transfer, notify the secretary of state thereof upon a blank furnished promptly by him for that purpose, stating the name and business address of the previous owner, if known, the number under which such motor cycle is registered and the name, residence, including county and business address, of the vendee. Upon filing such statement duly verified such vendee shall pay to the secretary of state a fee of one dollar, and upon receipt of such statement and fee the secretary of state shall file such statement in his office and note upon the registration book or index such change in ownership.

§ 303. **Distinctive number; form of number plates.** 1. Distinctive number must be carried on motor cycles. No person shall operate or drive a motor cycle on the public highways of this state after the first day of April, nineteen hundred and sixteen, unless such motor cycle shall have a distinctive number assigned to it by the secretary of state and a number plate issued by the secretary of state with a number corresponding to that of the certificate of registration conspicuously displayed on the rear of such motor cycle, securely fastened so as to prevent the same swinging.

2. Number plates to be changed annually. Such number plates shall be of a distinctly different color each year, and there shall be at all times a marked contrast between the color of the number plates and that of the numerals or letters thereon.

3. Form of number plate. Such number plates shall be of metal, on which there shall be the initials "N. Y." and there shall be the distinctive number assigned to the motor cycle. The size and shape of number plates and size of letters and numerals thereon shall be determined by the secretary of state. No motor cycle shall display the number plates of more than one State at a time, nor shall any plate be used other than those issued by the secretary of state.

§ 304. **Exemption of nonresident owners.** The provisions of the foregoing sections relating to registration and display of registration number shall not apply to a motor cycle owned by a nonresident of this state, other than a foreign corporation doing business in his state, provided that the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory or federal district of his residence relative to registration of motor cycles and the display of registration numbers thereon, and shall conspicuously display his registration numbers as required thereby. The provisions of this section, however, shall be operative as to a motor cycle owned by a nonresident of this state only to the extent that under the laws of the foreign country, state, territory or federal district of his residence like exemptions and privileges are granted to motor cycles duly registered under the laws of and owned by residents of this state.

§ 305. **Signaling and other devices; signals; rules of the road.** 1. Brakes, horns and lamps, signaling at crossings. Every motor cycle, operated or driven upon the public highways of this state, shall be provided with adequate brakes in good working

order and sufficient to control such motor cycle at all times when the same is in use, and a suitable and adequate bell, horn or other device for signaling, and shall, during the period from one-half hour after sunset to one-half hour before sunrise, display one lighted lamp on the front and one on the rear, or, when such motor cycle is operated with a passenger or other truck attached to the side or front, two such lamps on the front and one on the rear; and in all cases the lamps on a motor cycle shall include a red light visible from the rear. The rays of such rear lamp shall shine upon the number plate carried on the rear of such motor cycle in such manner as to render the numerals thereon visible for at least fifty feet in the direction from which the motor cycle is proceeding. The light of the front lamp or lamps shall be visible at least two hundred feet in the direction in which the motor cycle is proceeding. Every person operating or driving a motor cycle on the public highways of this state shall also, when approaching a cross road outside the limits of a city or incorporated village, slow down the speed of the same and shall sound his bell, horn or other device for signaling in such a manner as to give notice and warning of his approach.

2. Stopping on signal, and other regulations. A person operating or driving a motor cycle shall, on signal by raising the hand, from a person riding, leading or driving a horse or horses or other draft animals, bring such motor cycle immediately to a stop, and, if traveling in the opposite direction, remain stationary so long as may be reasonable to allow such horse or animal to pass, and, if traveling in the same direction, use reasonable caution in thereafter passing such horse or animal; provided that, in case such horse or animal appears badly frightened or the person operating such motor cycle is so signaled to do, such person shall cause the motor of such vehicle to cease running so long as shall be reasonably necessary to prevent accident and insure the safety of others. In approaching or passing a car of a street railway which has been stopped to allow passengers to alight or embark, the operator of every motor cycle shall slow down and if it be necessary for the safety of the public he shall bring said motor cycle to a full stop. Upon approaching a pedestrian who is upon the traveled part of any highway and not upon a sidewalk, and upon approaching an intersecting highway or a curve or a corner in a highway where the operator's view is obstructed, every person operating a motor cycle shall slow down and give a timely signal with his bell, horn or other device for signaling.

8. Rules of the road. Whenever a person operating a motor cycle shall meet on a public highway any other person riding or driving a horse or horses or other draft animals or any other vehicle, the person so operating such motor cycle shall seasonably turn the same to the right of the center of such highway so as to pass without interference. Any such person so operating a motor cycle shall, on overtaking any such horse, draft animal or other vehicle, pass on the left side thereof, and the rider or driver of such horse, draft animal or other vehicle shall, as soon as practicable, turn to the right so as to allow free passage on the left. Any such person so operating a motor cycle shall, at the intersection of public highways, keep to the right of the intersection of the centers of such highways when turning to the right and pass to the right of such intersection when turning to the left.

§ 306. Speed permitted. Every person operating a motor cycle on the public highways of this state shall drive the same in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person; provided, that a rate of speed in excess of thirty miles an hour for a distance of one-fourth of a mile shall be presumptive evidence of driving at a rate of speed which is not careful and prudent.

§ 307. Local ordinances prohibited. Except as herein otherwise provided, local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring from any owner to whom this article is applicable any tax, fee, license or permit for the use of the public highways, or excluding any such owner from the free use of such public highways, excepting such driveway, speedway or road as has been or may be expressly set apart by law for the exclusive use of horses and light carriages or in any other way respecting motor cycles or their speed upon or use of the public highways; and no ordinance, rule or regulation contrary to or in any wise inconsistent with the provisions of this article, now in force or hereafter enacted, shall have any effect; provided, however, that the power given to local authorities to regulate vehicles offered to the public for hire, and processions, assemblages or parades in the streets or public places, and all ordinances, rules and regulations which may have been or which may be enacted in pursuance of such powers shall remain

in full force and effect; and provided, further, that local authorities may set aside for a given time a specified public highway for speed contests or races, to be conducted under proper restriction for the safety of the public; and provided, further, that local authorities may exclude motor cycles from any cemetery or grounds used for the burial of the dead, and may by general rule, ordinance or regulation exclude motor cycles used solely for commercial purposes from any park or part of a park system where such general rule, ordinance or regulation is applicable equally and generally to all other vehicles used for the same purposes, and provided further that nothing in this article contained shall impair the validity or effect of any ordinances, regulating the speed of motor cycles, or of any traffic regulations with regard to the operation of motor cycles, heretofore or hereafter made, adopted or prescribed pursuant to law in any city of the first class or in any city of the second class in a county adjoining a city of the first class; provided, further, that the local authorities of other cities and incorporated villages may limit by ordinance, rule or regulation the speed of motor cycles on the public highways, such speed limitation not to be in any case less than one mile in four minutes, and the maintenance of a greater rate of speed for one-eighth of a mile shall be presumptive evidence of driving at a rate of speed which is not careful and prudent, and on further condition that each city or village shall have placed conspicuously on each main public highway where the city or village line crosses the same and on every main highway where the rate of speed changes, signs of sufficient size to be easily readable by a person using the highways, bearing the words, "City of . . . . . " or "Incorporated village of . . . . .," "Slow down to . . . . miles" (the rate being inserted), and also a arrow pointing in the direction where the speed is to be reduced or changed, and also on further condition that such ordinance, rule or regulation shall fix the punishment for violation thereof, which punishment shall, during the existence of the ordinance, rule or regulation, supersede those specified in subdivision two of section three hundred and eight of this chapter but, except in cities of the first class, shall not exceed the same. Official copies of all local ordinances passed under the provisions of this subdivision shall be filed with the secretary of state at least thirty days before they shall respectively take effect and all such local ordinances shall be printed in pamphlet form and issued at regular intervals by the secretary of state.

§ 308. **Punishment for violation; procedure.** 1. The violation of any of the provisions of sections three hundred and two and three hundred and three of this article shall constitute a misdemeanor punishable by a fine not exceeding twenty-five dollars.

2. The violation of any of the provisions of section three hundred and six of this article shall constitute a misdemeanor punishable by a fine of not exceeding twenty-five dollars.

3. **Punishment for operating motor cycle while in an intoxicated condition; for going away without stopping after accident and making himself known.** Whoever operates a motor cycle while in an intoxicated condition shall be guilty of a misdemeanor. Any person operating a motor cycle who, knowing that injury has been caused to a person or property, due to the culpability of the said operator, or to accident, leaves the place of said injury or accident, without stopping and giving his name, residence, including street and street number, and operator's license number to the injured party, or to a police officer, or in case no police officer is in the vicinity of the place of said injury or accident, then reporting the same to the nearest police station, or judicial officer, shall be guilty of a felony punishable by a fine of not more than five hundred dollars or by imprisonment for a term not exceeding two years, or by both such fine and imprisonment; and if any person be convicted a second time of either of the foregoing offenses, he shall be guilty of a felony punishable by imprisonment for a term of not less than one year and not more than five years. A conviction of a violation of this subdivision shall be reported forthwith by the trial court or the clerk thereof to the secretary of state, who shall upon recommendation of the trial court suspend the license of the person so convicted or if he be an owner the certificate or registration of his motor cycle and, if no appeal therefrom be taken, or if an appeal duly taken be dismissed, or the judgment affirmed, and upon notice thereof by said clerk, the secretary of state shall revoke such license or in the case of an owner the certificate of registration of his motor cycle, and shall order the license or certificate of registration delivered to the secretary of state, and shall not reissue to him said license or certificate of registration or any other license or certificate of registration unless the secretary of state in his discretion, after an investigation or upon a hearing, decides to reissue or issue such license or certificate.

4. Any person who operates any motor cycle while a certificate

of registration of motor cycles issued to him is suspended or revoked shall be guilty of a misdemeanor.

5. Any person making a false statement in the verified application for registration shall be guilty of a misdemeanor punishable by a fine of not exceeding fifty dollars.

6. Upon a third or subsequent conviction of the registered owner of a motor cycle for a violation of the provisions of section three hundred and six or an ordinance, rule or regulation regulating speed of motor cycles under section three hundred and seven, the secretary of state upon the recommendation of the trial court shall forthwith revoke the license of the person so convicted and no new license shall be issued to such person for at least six months after the date of such conviction nor thereafter except in the discretion of the said secretary of state.

7. Any person violating any of the provisions of any section of this article, which violation is stated separately to be a misdemeanor, is punishable by imprisonment for not more than one year or by a fine of not more than five hundred dollars, or by both, and for a violation of any other provision of this article, for which violation no punishment has been specified, shall be guilty of a misdemeanor punishable by a fine of not exceeding twenty-five dollars.

8. Certifying conviction to the secretary of state. Upon the conviction of any person for a violation of any of the provisions of this article the trial court or the clerk thereof shall immediately certify the facts of the case, including the name and address of the offender, the judgment of the court and the sentence imposed, to the secretary of state, who shall enter the same in the book or index of registered motor cycles opposite the name of the person so convicted, and in the case of any other person, in a book or index of offenders to be kept for such purpose. If any such conviction shall be reversed upon appeal therefrom, the person whose conviction has been so reversed may serve on the secretary of state a certified copy of the order of reversal, whereupon the secretary of state shall enter the same in the proper book or index in connection with the record of such conviction.

9. Release from custody, bail, et cetera. In case any person shall be taken into custody charged with a violation of any of the provisions of this article, he shall forthwith be taken before the nearest magistrate, captain, lieutenant, clerk of the court or acting lieutenant who shall have the power of a magistrate and

be entitled to an immediate hearing or admission to bail, and if such hearing cannot be had, be released from custody on giving a bond or undertaking, excuted by a fidelity or surety company authorized to do business in this state, or other bail in the form provided by section five hundred and sixty-eight of the code of criminal procedure, such bond or undertaking to be in an amount not exceeding one hundred dollars, if the charge be for a misdemeanor, except as herein provided where the charge is a violation of subdivision three of section three hundred and eight of this article, for his appearance to answer for such violation at such time and place as shall then be indicated. In case a person is taken into custody charged with being guilty of a felony, in violation of any of the provisions of this article, such bond or undertaking shall be in an amount not less than one thousand dollars. On giving his personal undertaking to appear to answer any such violation at such time and place as shall then be indicated, secured by the deposit of a sum of money equal to the amount of such bond or undertaking, or in lieu thereof, in case the person taken into custody is the owner, by leaving the motor cycle, or in case such person taken into custody is not the owner, by leaving the motor cycle as herein provided with a written consent given at the time by the owner who must be present, with such officer; or in case such person is taken into custody because of a violation of any of the provisions of this article other than on a charge of violating any of the provisions of subdivision three of section three hundred and eight and such officer is not accessible, be forthwith released from custody on giving his name and address to the person making the arrest and depositing with such arresting officer the sum of one hundred dollars, or in lieu thereof, in case the person taken into custody is the owner, by leaving the motor cycle, or, in case such person taken into custody is not the owner, by leaving the motor cycle with a written consent at the time by the owner who must be present; provided, that, in any such case, the officer making the arrest shall give a receipt in writing for such sum or motor cycle deposited and notify such person to appear before the most accessible magistrate, describing him, and specifying the place and hour. In case such bond or undertaking shall not be given or deposit made by the owner or other person taken into custody, the provisions of law in reference to bail, in case of a misdemeanor, shall apply, where the charge is a violation of subdivision three of

section three hundred and eight of this article, the provisions of law in reference to bail in cases of a misdemeanor or a felony as the case may be shall apply exclusively.

10. Holding defendant to answer where magistrate has not jurisdiction to try offender; admitting to bail. In case the magistrate before whom any person shall be taken, charged with the violation of any provision of this article, shall not have jurisdiction to try the defendant, but shall hold the defendant to answer as provided by section two hundred and eight of the code of criminal procedure, he shall admit such defendant to bail upon his giving a surety company's bond or undertaking to appear to answer for such violation at such time and place as shall then be indicated, or upon his giving a written undertaking in the form provided in section five hundred and sixty-eight of the code of criminal procedure in a sum not exceeding one hundred dollars, except that in a case where the defendant is charged with a violation of any of the provisions of subdivision three of section three hundred and eight of this article, the provisions of law in reference to bail in cases of a misdemeanor or a felony as the case may be shall apply exclusively.

11. Disposition and return of bail. Such bail as may be deposited as herein provided shall be held by the officer accepting the same or the clerk of the court. Upon the person who has been taken into custody and given security or bail for his appearance surrendering himself for trial and upon the conclusion of such trial the court shall issue to the defendant an order upon the magistrate or clerk of the court or other officer authorized to accept bail to return or deliver back said security or bail as was given.

12. A conviction of violation of any provision of this article shall not be a bar to a prosecution for an assault or for a homicide committed by any person in operating a motor cycle.

**§ 309. Disposition of registration fees; fines and penalties; reports of criminal actions or proceedings.** 1. Of the registration fees collected as herein provided, fifty per centum shall be paid by the secretary of state into the state treasury as provided in the state finance law. The remaining fifty per centum of each fee shall be paid by the secretary of state, on the first day of each month or within ten days thereafter, to the treasurer of the county in which the person paying the fees resides, unless such person resides in a county wholly contained within a city, in which case

such fifty per centum shall be so paid to the chamberlain or other chief fiscal officer of such city.

2. All fines, penalties or forfeitures collected for violations of any of the provisions of this article or of any act in relation to the use of the public highways by motor cycles now in force or hereafter enacted, under the sentence or judgment of any court, judge, magistrate or other judicial officer having jurisdiction in the premises, whether imposed by statute or local ordinance, rule or regulation, shall be apportioned as follows: Fifty per centum to the state and fifty per centum to the county wherein the violation occurred, unless the same occurred in a county wholly contained within the boundaries of a city, in which case such fifty per centum shall be paid to such city. Such moneys shall be paid over by such court, judge, magistrate or other judicial officer, according to such apportionment, on the first day of each month or within ten days thereafter, as follows: The amount due the state, to the state treasurer, and the amount due to a county or city to the treasurer of the county or chamberlain or other chief fiscal officer of the city. Each such payment shall be accompanied with a statement, setting forth the actions or proceedings in which the moneys so paid were collected, the name and residence of the defendant in each case, the nature of the offense, and the fine, penalty, sentence or judgment imposed.

3. The portion of the fees, fines, penalties and forfeitures paid into the state treasury under this section shall be appropriated and used for the maintenance and repair of the improved roads of the state, under the direction of the state commission of highways. The portion of the fees, fines, penalties and forfeitures paid to a county under this section shall be used exclusively for the maintenance and repair of state and county highways within the county and be subject to the draft of the state commission of highways. The portion of such fees, fines, penalties and forfeitures paid to a city wholly containing within its boundaries one or more counties shall be available for the ordinary expenses of such city unless otherwise specially provided by law.

4. On the first day of each month or within ten days thereafter, every judge, magistrate or clerk of a court having jurisdiction of the violation of any of the provisions of this article, shall make and forward to the treasurer of the state, a verified report of all criminal actions or proceedings instituted or tried before him or it during the preceding calendar month for violation of any of

the provisions of this article, or of any statute or local ordinance, rule or regulation, which report shall set forth the name and address of the defendants, the nature of the offenses and the fines or penalties collected or imposed by such court, judge, magistrate or judicial officer, which report shall be open to inspection during reasonable business hours to any citizen of the state. On or before the first day of February of each year, the treasurer shall transmit to each branch of the legislature a statement showing the amount of receipts under this article during the preceding fiscal year paid into the state treasury.

§ 309-a. **Powers of inspector.** Any employee in the motor vehicle bureau of the office of the secretary of state, designated by the secretary of state as inspector of motor vehicles and who receives compensation from the state for such employment, is hereby declared to be a peace officer within the provisions of section one hundred and fifty-four of the code of criminal procedure.

Added by L. 1917, ch. 243.

§ 310. **Acts repealed.** All acts or parts of acts inconsistent with this article or contrary thereto are hereby expressly repealed.

Whole of Article XI-a, added by L. 1916, ch. 72.

## ARTICLE XII.

### Miscellaneous Provisions.

Section 320. Construction or improvement of highways by county and town.

320a. County system of roads.

321. When commissioners do not act.

322. Intemperate drivers not to be engaged.

323. Drivers, when to be discharged.

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- Section 337. Penalties, how recovered.  
338. Acquisition of plank roads.  
339. Borrowing money; bonds.  
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341. Roads so acquired to be part of highway system.  
342. When road is in two or more counties.  
343. Albany post road; railroad tracks thereon.  
344. Lighting roads, highways and bridges.

**§ 320. Construction or improvement of highways by county and town.** The board of supervisors of a county may provide for the construction or improvement of a highway or section thereof in one or more towns of the county or of a highway laid out along the boundary line between a city or village and a town or towns, at the joint expense of the county and town, as provided in this section. The board may, by resolution, direct the district or county superintendent to examine such highway or sections thereof, and report thereon, and if the board considers such highway or section thereof, to be of sufficient importance to be constructed or improved as provided herein, it shall direct such district or county superintendent to prepare or cause to be prepared maps, plans, specifications and estimates therefor and such district or county superintendent shall, subject to the direction and control of the board of supervisors, have the same powers and duties with respect to such highway or section thereof as are given the division engineer with respect to state and county highways in section one hundred and twenty-five of this chapter. Such maps, plans and specifications may provide for the change in grade of a highway already existing if thereby a lessened gradient may be obtained without decreasing the usefulness of the highway. Upon the completion of such preliminary maps, plans, specifications and estimates they shall be submitted to the board of supervisors for approval, and such board may thereupon adopt a resolution providing for the construction or improvement of such highway in accordance with such maps, plans, specifications and estimates or in accordance with such maps, plans, specifications and estimates as may be approved by it. The board of supervisors shall award contracts for the construction or improvement of such highway and the provisions of section one hundred and thirty of this chapter shall apply so far as may be to such contracts and the award, execution and fulfillment thereof. Such contract may be awarded to the town board of any town in which such highway or section thereof is located and the pro-

visions of section one hundred and thirty-one of this chapter shall apply thereto so far as may be. If such contract be awarded to a town board such board shall, by resolution, designate some suitable person or persons, to be approved by the county superintendent of highways to carry into effect, on behalf of such town, such contract, and transact all business in respect thereto as may be necessary. A member of the town board at the time such contract was awarded or such designation was made, or a person who is a partner of, or a stockholder in the same corporation as that of such member shall not be so designated. A member of the town board at the time such designation was made, or a firm, corporation or association of which he is a member or has an interest, shall not be directly or indirectly interested in any such contract nor shall such member, or such firm, corporation or association furnish materials or perform labor or services, either directly or indirectly under or in connection with the performance of any of the work required in accordance with such contract, nor shall such member, firm or corporation or association be paid for materials furnished or services rendered in respect to such contract. The town clerk shall transmit to the board of supervisors a certified copy of the resolution designating the person or persons to carry into effect such contract prior to the awarding of a contract to the town board. The person or persons so designated shall, before the contract is executed, give an undertaking to the county or town with sureties to be approved by the board of supervisors and the penalty of such surety shall be determined by the board of supervisors. Such undertaking shall be conditioned on the faithful performance of their duties in respect to such contract and for the proper accounting, safe keeping and lawful disbursement of all moneys that may come into their hands thereunder. Such undertaking shall be filed in the office of the town clerk and a certified copy thereof shall be transmitted to the county clerk and the board of supervisors. The person or persons so designated shall thereupon be competent to receive all moneys payable under such contract under the provisions of this section, and they shall account therefor to the board of supervisors. The town board, after such contract is awarded, shall designate, by resolution, a banking corporation or a trust company wherein the moneys received under such contract shall be deposited. Such bank or trust company shall, upon the request of the town board, make a statement of the money so deposited. The board of supervisors shall prescribe the manner

in which the moneys received under such contract shall be expended and the form of accounts to be kept by the person or persons designated as above provided. Reports may be required by the boards of supervisors from time to time from such person or persons. If a town shall construct a highway or section thereof, by contract as above provided, for a lesser sum than the contract price, such surplus shall be credited to the general town fund.

The board of supervisors shall determine the portion of the cost of the construction or improvement of such highway to be borne by the county and the portion to be borne by the town or towns in which such highway is located. The cost of the portion constructed or improved within the boundaries of a city shall be borne by the county. The amount to be borne by the county shall be levied and collected as a county charge and paid into the county treasury. The amount to be borne by the town or towns in which the highway is located shall be levied and collected as a town charge and when collected shall be paid into the county treasury. If such highway or section thereof deviate from the line of a highway already existing, the board of supervisors shall acquire land for the requisite right of way, and such board may also acquire lands for the purpose of obtaining gravel, stone or other material, when required for the construction or improvement of such highway or section thereof, or for spoil banks, together with a right of way to such spoil banks and to any bed, pit, quarry or other place where such gravel, stone or other material may be located, and the provisions of sections one hundred and forty-eight to one hundred and fifty-five, both inclusive, shall apply to the acquisition of such lands as far as may be, except that the cost of such lands and the expenses incident to acquiring the same shall be deemed a part of the cost of the construction or improvement of such highway under the provisions of this section. If the construction or improvement of such highway involve the elimination of a grade crossing the portion of the cost of such elimination and the construction of a new crossing chargeable to the town in pursuance of law shall be deemed a part of the cost of the construction or improvement of such highway under the provisions of this section. The amount so paid by the town shall not be considered in determining the minimum amount to be levied and collected in each year for the repair and improvement of highways as provided in section ninety-four of this chapter nor shall such amount

be considered in determining the amount to be paid by the state to the town for the repair and improvement of highways therein. The board of supervisors may by resolution authorize the county treasurer of the county or the supervisors of the respective towns to borrow money on the faith and credit of the county or of such towns by temporary loan in anticipation of the next succeeding tax levy or of an issue of bonds before such levy, or by the issue and sale of bonds, to pay the portion of the cost of such construction or improvement to be borne respectively by the county or such town or towns. Such resolution may also provide for the issue and sale of such bonds and shall conform so far as may be with the provisions of this chapter relating to a resolution authorizing a town to borrow money to pay its share of the cost of construction or improvement of a county highway. The construction or improvement authorized by such resolution shall be done under the supervision and direction of the district or county superintendent. Payments therefor shall be made from time to time by the county treasurer upon the certificate of the district or county superintendent indorsed by the chairman of the board of supervisors.

Such highways, when completed and accepted by the board of supervisors, shall be thereafter repaired and maintained by the towns wherein such highways are located in the same manner as all other town highways; except there shall be raised annually by the county and by the town a tax of not less than one hundred dollars per mile for each mile of highways improved in a town under the provisions of this section. The amount thereof to be borne by the county or by the town shall be apportioned by the board of supervisors. The portion to be borne by the county shall be levied and collected in the same manner as other county taxes and shall be paid into the county treasury. The resolution providing for the collection of such taxes shall also indicate the amount which shall be paid to each town and a certified copy thereof shall be filed with the county treasurer. The amount thereof to be borne by the town shall, by resolution of the town board, be paid from any funds in such town that may be legally used for highway purposes.

Amended by L. 1912, ch. 534, L. 1914, ch. 198 and L. 1917, ch. 558 and L. 1919 ch. 377.

§ 320-a. County aid for construction, improvement and maintenance of town highways. The board of supervisors of a county

may aid a town or towns in the construction or improvement of a highway or highways therein, and shall designate the highway or highways which the town or towns are to construct or improve by the aid of the county. Such county may prepare a map of the system of highways thus to be improved in that county.

The board may by resolution direct the county superintendent to supervise the preparation of grade and culvert work of a road, so designated by said map for improvement, by the town superintendent of the town in which such improvement shall be made, and upon the completion thereof by the town, and the county superintendent's certification that the road is so prepared and that the town is equipped with sufficient machinery to properly perform the work, such machinery to be furnished by the town and used during the road's construction, the board may, by resolution, order the construction of an improved road under the direction of a committee known as the highway officials of the county as hereinafter provided. The construction work shall be under the charge and supervision of the town superintendent of the town in which the work is being done. If for any cause the town superintendent is incapacitated or in the opinion of the county superintendent is incompetent to properly take charge of the work, some competent person shall be designated by the county superintendent by and with the advice and consent of the town board and the compensation of the town superintendent or person in charge shall be a town charge.

The employment of convict labor on roads so constructed shall be authorized and permitted, in the discretion of the superintendent of state prisons, upon the requisition of the county superintendent of highways. The board of supervisors of Erie county shall have power, if they deem it proper, to employ convicts, sentenced to be confined in a penitentiary situate within the territorial limits of such county and liable to be employed at hard labor, upon any highway or work connected therewith within such county, and such board of supervisors shall have power to make all necessary appointments, rules and regulations for such employment within such county, including the right to fix a per diem compensation for such employment at a rate not to exceed ten cents.

The highway officials of the county under this section shall consist of the county superintendent, three members of the board, appointed by the chairman. The supervisor of the town in which a road is being improved shall be a member of the said

committee on all questions involving the work in the town of which he is the supervisor.

Unless the advice and direction of the highway officials shall be followed in the prosecution of the work, no liability therefor shall accrue to the county for its share of the cost of work.

Upon ordering the construction of an improved road under this section, the board of supervisors shall, by resolution, determine the proportions thereof to be borne by the county and town or towns respectively. The part, if any, to be borne by a town, as shown by such determination may be a town charge, and the residue shall be a county charge. The amounts to be borne by the county shall be provided for by a tax, to be levied upon the taxable property of the county and collected in the same manner as for other county charges and shall be paid into the county treasury. The amount thereof to be borne by the town may by resolution of the town board, be paid from any funds in such town that may be legally used for highway purposes. The board of supervisors may, in its discretion, appropriate and make immediately available from county funds either the whole of the moneys to complete the construction of such road or the part thereof to be provided by the county. If it shall determine that sufficient moneys are not available to pay the amount appropriated, or a specified part thereof, after defraying other county expenses, it may direct the county treasurer to borrow the same, in anticipation of taxes or of the proceeds of bonds to be issued as hereinafter provided, and to pledge the faith and credit of the county for the payment of the amount when due, with interest, and issue temporary certificates of indebtedness therefor. The board may, by resolution, authorize the issuance and sale of bonds of the county for the amount appropriated or for any part thereof, which may be the whole of such additional amount needed for the completion of such improvement or the county's share thereof or a part of such share. The proceeds of such bonds shall be paid into the county treasury and applied to the cost of such improvement or to the payment and redemption of certificates of indebtedness, if any, issued as above provided. The board of supervisors on petition of the town board of a town in which any part of the improved road is located, may by resolution authorize such town to borrow money on the faith and credit of the town by temporary loan in anticipation of the next succeeding tax levy to pay its share of the cost of the improvement which has been

ordered by the board of supervisors. Town bonds may be issued and sold by the supervisors, in the name of the town, for the amount so authorized. The proceeds thereof shall be paid into the county treasury and be a part of the fund to be applied to the cost of such improvement within the town or to the payment and redemption of county bonds, if any, issued to pay the share of such town. County or town bonds issued under the foregoing provisions shall be payable not more than thirty years from their date and shall be sold for not less than par. The board of supervisors shall, from time to time, impose upon the taxable property of the county a tax sufficient to pay at maturity any such county bonds, and interest, and upon the taxable property of any town a tax sufficient to pay at maturity any such bonds of the town, and interest. Payments from time to time by the county treasurer of moneys provided for under this section shall be made for the prosecution of such work upon the certificate of the district or county superintendent countersigned by the chairman of the highway officials committee. Said orders shall be drawn to the order of the supervisors of the respective towns where roads are being constructed to be disbursed by them, upon the orders of the town superintendent or person designated in his stead, in accordance with the agreement as provided by section one hundred and five of this chapter and accounted for in the supervisor's annual report as provided by section one hundred and seven of this chapter.

Such highways, when completed and accepted by the board of supervisors, shall be thereafter repaired and maintained by the towns wherein such highways are located in the same manner as all other town highways; except there shall be raised annually by the county and by the town a tax of not less than one hundred dollars per mile for each mile of highways improved in a town under the provisions of this section. The amount thereof to be borne by the county or by the town or towns shall be apportioned by the board of supervisors. The part, if any, to be borne by a town or towns, as shown by such apportionment, shall be a charge against the town or towns and the residue shall be a county charge. The amount to be borne by the county shall be provided for by a tax to be levied upon the taxable property of the county and collected in the same manner as for other county charges and shall be paid into the county treasury. The amount thereof to be borne by the town shall, by resolution of the town board, be paid

from any funds in such town that may be legally used for highway purposes. The resolution providing for such apportionment shall also indicate the amount which shall be paid to each such town, and a certified copy thereof shall be filed with the county treasurer. On receipt of such money the supervisor shall credit the amount to the town highway fund to be paid out on the written order of the town superintendent in accordance with agreement which is provided by section one hundred and five of this chapter and shall be accounted for in the supervisor's annual report as provided by section one hundred and seven of this chapter.

Added by L. 1914, ch. 61 and amended by L. 1915, ch. 556 and L. 1916, ch. 458, L. 1917, ch. 231, and L. 1918, ch. 321.

### **AN ACT to provide for country roads in certain counties.**

**Section 1. County road system of working highways.** In a county adjacent to a city of the first class or containing a city of the second class, the board of supervisors of such county may, by concurrent vote of at least a majority of the members thereof, by resolution adopt the county road system and at any time and from time to time cause to be designated as county roads such portions of the public highways in such county as they shall deem advisable, outside of the limits of any city of the first or second class in such county, provided that any such public highway so designated as a county road is not a state or county highway, as defined in section three of the highway law, and shall cause such designation and a map of such county road to be filed in the clerk's office of such county; the roads so designated shall, as far as practicable, be leading market roads in such county.

Amended by L. 1918, ch. 295.

**§ 2. Construction and maintenance of county roads.** County roads as defined in subdivision three of section three of the highway law and as designated pursuant to this act shall be exclusively under the jurisdiction of the board of supervisors and exempt from the jurisdiction of the highway officers of the several towns, villages and cities in which said county roads are located. The expenses of constructing, maintaining and improving the county roads of such county shall be a county charge. The board of supervisors shall, upon the receipt of the county superintendent's report as provided for by subdivision two-a of section thirty-three of the highway law, consider the estimate in such report. It may by a majority vote of the members thereof approve such estimate or increase or reduce the amount of any of the estimates contained therein. The statement as thus approved, increased or reduced, shall be signed in duplicate by a majority of the members of the board, one copy of which shall be filed in the office of the county clerk, and the other delivered to the county treasurer. The clerk of the board of supervisors shall make and transmit a copy of such statement to the highway commission and to the county superintendent. The board of supervisors shall thereupon cause the amounts therein to be raised by the issuance of county

bonds therefor or to be assessed, levied and collected in such county in the same manner as other county charges, and such amounts shall be expended only for the purpose specified in such statement. The warrant for the collection of such taxes in such county shall direct the payment of the moneys so collected to the county treasurer to be held by him and paid out for the purpose or purposes specified in such statement, as provided in subdivision two-a of section thirty-three. The construction and maintenance of such county roads shall be under the supervision of the board of supervisors.

Amended by L. 1918, ch. 295.

§ 3. **Bonding for county roads.** The board of supervisors of such county may borrow money from time to time for the construction, improvement, maintenance and repair of the county roads in such county, and may issue the bonds or other evidences of indebtedness of the county therefor; but such bonds or other evidences of indebtedness shall not bear a rate of interest exceeding five per centum per annum, and shall not be for a longer term than twenty years, and shall not be sold for less than par.

§ 4. **Acquisition of lands for right of way and other purposes.** If a county road proposed to be constructed, improved, widened or otherwise altered, shall deviate from the line of a county road already existing, or shall necessitate the acquiring of a right of way for such purpose, the board of supervisors of the county where such county road is or shall be located, shall acquire land for the requisite right of way prior to the actual commencement of the work of construction. The board of supervisors may also acquire lands for the purpose of obtaining gravel, stone or other material, when required for the construction, improvement or maintenance of county roads, or for spoil banks, together with a right of way to such spoil bank, and to any bed, pit, quarry or other place where such gravel, stone or other material may be located. The expenses of acquiring lands for such purposes shall be a county charge.

L. 1910, ch. 564, as amended by L. 1911, ch. 254 and L. 1913, ch. 473.

"See note following section 74, County Law section 6."

§ 321. **When commissioners do not act.** When a commissioner or other officer appointed by a court under this chapter shall neglect or be prevented from serving, the courts which appointed him shall appoint another in his place.

§ 322. **Intemperate drivers not to be engaged.** No person owning any carriage for the conveyance of passengers, running or traveling upon any highway or road, shall employ, or continue in employment, any person to drive such carriage who is addicted to drunkenness, or to the excessive use of spirituous liquors; and if any such owner shall violate the provisions of this section, he shall forfeit at the rate of five dollars per day, for all the time during which he shall have kept any such driver in his employment.

§ 323. **Drivers, when to be discharged.** If any driver, while actually employed in driving any such carriage, shall be guilty of intoxication, to such a degree as to endanger the safety of the passengers in the carriage, the owner of such carriage shall, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith discharge such driver from his employment; and every such owner, who shall retain, or have in his service within six months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day, for all the time during which he shall keep any such driver in his employment after receiving such notice.

§ 324. **Leaving horses without being tied.** No driver of any carriage used for the purpose of conveying passengers for hire shall leave the horse attached thereto, while passengers remain in the same, without first making such horses fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other person so as to prevent their running; and if any such driver shall offend against the provisions of this section, he shall forfeit the sum of twenty dollars.

§ 325. **Owners of certain carriages liable for acts of drivers.** The owners of every carriage running or traveling upon any turnpike, road or highway, for the conveyance of passengers, shall be liable jointly and severally, to the party injured, for all injuries and damages done by any person in the employment of such owners, as a driver, while driving such carriage, whether the act occasioning such injury or damage be wilful or negligent, or otherwise, in the same manner as such driver would be liable.

§ 326. **Term "carriage" defined.** The term "carriage" as used in this article shall be construed to include stage coaches, wagons, carts, sleighs, sleds, automobiles or other motor vehicles, and every other carriage or vehicle used for the transportation of persons and goods, or either of them, and bicycles, tricycles and all other vehicles propelled by manumotive or pedomotive power, or by electricity, steam, gasoline or other source of energy.

§ 327. **Entitled to free use of highways.** The commissioners, trustees or other authorities having charge or control of any highway, public street, park, parkway, driveway, or place, shall have no power or authority to pass, enforce or maintain any ordinance,

rule or regulation by which any person using a bicycle or tricycle shall be excluded or prohibited from the free use of any highway, public street, avenue, roadway, driveway, parkway, park, or place, at any time when the same is open to the free use of persons having and using other pleasure carriages, except upon such driveway, speedway or road as has been or may be expressly set apart by law for the exclusive use of horses and light carriages. But nothing herein shall prevent the passage, enforcement or maintenance of any regulation, ordinance or rule, regulating the use of bicycles or tricycles in highways, public streets, driveways, parks, parkways, and places, or the regulation of the speed of carriages, vehicles or engines, in public parks and upon parkways and driveways in the city of New York, under the exclusive jurisdiction and control of the department of parks of said city, nor prevent any such commissioners, trustees or other authorities in any other city from regulating the speed of any vehicles herein described in such manner as to limit and determine the proper rate of speed with which such vehicle may be propelled nor in such manner as to require, direct or prohibit the use of bells, lamps and other appurtenances nor to prohibit the use of any vehicle upon that part of the highway, street, park, or parkway, commonly known as the footpath or sidewalk.

§ 328. Depositing ashes, stones, sticks, etc., upon the highway. Any person who shall deposit or throw loose stones in the gutter or grass adjoining a highway, or shall deposit or throw upon a highway, ashes, papers, stones, sticks, or other rubbish, shall be liable to a penalty of ten dollars to be sued for and recovered by the town superintendent. No stone or other rubbish shall be drawn to and deposited within the limits of any highway, except for the purpose of filling in a depression or otherwise improving the highway, without the consent and under the direction of the town superintendent.

#### PENAL LAW SECTION 1434.

§ 1434. Placing injurious substances on roads. Whoever willfully shall throw, drop or place, or shall cause or procure to be thrown, dropped or placed, in or upon any cycle path, avenue, street, sidewalk, alley, road, highway or public way or place, any glass, tacks, nails, pieces of metal, brier, thorn or other substance which might injure any animal or puncture any tire used on a vehicle, or which might wound, disable or injure any person using such way, shall be guilty of a misdemeanor, and on conviction be fined not less than five nor more than fifty dollars.

§ 2. This act shall take effect September first, nineteen hundred and sixteen.

Amended by L. 1916, ch. 321.

§ 329. **Traction engines on highways.** The owner of a steam roller, steam traction engine, any other machinery propelled or driven by steam, or of any gasoline driven traction engine, his servant or agent, shall not allow, permit or use the same, to pass over, through or upon any public highway or street except upon railroad tracks, unless such owner or his agents or servant shall send before the same a person of mature age, at least one-eighth of a mile in advance, who shall notify and warn persons traveling and using such highway or street with horses or other domestic animals, of the approach thereof, and at night such person shall carry a red light, except in incorporated villages and cities.

Amended by L. 1914, ch. 64.

**Damages for failure to comply.** Where a steam roller is used upon the highway without sending a person ahead to warn travelers of its approach, and the plaintiff's horse is frightened thereby, a verdict for the plaintiff is warranted if there be no contributory negligence on his part. *Buchanan's Sons v. Cranford Co.*, 112 App. Div. 278, 98 App. Div. 378 (1906).

§ 329-a. **Lights on vehicles.** Every vehicle on wheels whether stationary or in motion, while upon any public street, avenue, highway, or bridge, shall have attached thereto a light or lights so placed as to be clearly visible from the front and from the rear from one-half hour after sunset to one-half hour before sunrise; provided, however, that this section shall not apply to a vehicle designed to be propelled by hand or to a vehicle designed principally for the transportation of hay or straw while loaded with such commodities. Upon the written application and presentation of reasons therefor by the owner of the vehicle, the state commission of highways may in writing, and subject to such requirements as it may elect to impose, but without expense to the applicant, except said vehicle from the provisions of this section for such period of time as the commission may determine. The provisions of this section shall apply to all cities, towns, and villages of the state except the city of New York. Nothing in this section shall be construed to affect the provisions of any existing statute, rule, or regulation requiring lights on motor vehicles or affecting the obligations of operators or occupants thereof. A person violating the provisions of this section shall be guilty of a misdemeanor punishable by a fine not to exceed ten dollars.

Added by L. 1914, ch. 32, and amended by L. 1915, ch. 367, and L. 1918, ch. 258.

§ 330. **Injuries to highways.** Whoever shall injure any highway or bridge maintained at the public expense, by obstructing or diverting any creek, water-course or sluice, or by dragging logs or timber on its surface or by drawing or propelling over the same a load of such weight as to injure or destroy the culverts or bridges along the same, or of such weight that will destroy, break or injure the surface of any improved state, county or town highway, or by any other act, or shall injure, deface or destroy any mile-stone or guide-post erected on any highway, shall for every such offense forfeit treble damages.

Amended by L. 1910, ch. 568.

PENAL LAW, SECTION 1423.

I. A person who wilfully or maliciously displaces, removes, injures or destroys a public highway or bridge, or a private way laid out by authority of law, or a bridge upon such public or private way, is punishable by imprisonment for not more than two years.

II. A person who wilfully or maliciously displaces, removes, injures or destroys a mile-board, mile-stone, danger sign or signal, or guide sign or post, or any inscription thereon, lawfully within a public highway; or who, in any manner paints, prints, places, puts or affixes, or causes to be painted, printed, placed or affixed, any business or commercial advertisement on or to any stone, tree, fence, stump, pole, building or other object, which is the property of another, without first obtaining the written consent of such owner thereof, or who in any manner paints, prints, places, puts or affixes, or causes to be painted, printed, placed or affixed, such an advertisement on or to any stone, tree, fence, stump, pole, mile-board, mile-stone, danger-sign, danger-signal, guide-sign, guide-post, bill-board, building or other object within the limits of a public highway is punishable by a fine of not less than five dollars nor more than twenty-five dollars, or by imprisonment for not more than ten days, or by both such fine and imprisonment. Any advertisement in or upon a public highway in violation of the provisions of this subdivision may be taken down, removed or destroyed by anyone.

Amended by L. 1911, ch. 316 and L. 1915, ch. 150.

NOTE.—Section 73 of the Highway Law provides that in case of any injuries to a highway as covered by this section, the town superintendent shall bring an action in the name of the town to recover damages therefor. See sections 74, 330, 46 of the Highway Law, and sections 1530, 1841, 1857 of the Penal Law.

§ 331. **When town not liable for damages.** No town shall be liable for any damage resulting to person or property by the reason of the breaking of any bridge, sluice or culvert, by transportation on the same of any traction engine, portable piece of machinery, or of any vehicle or load, together weighing eight tons or over, but any owner thereof or other person engaged in

transporting or directing the same shall be liable for all damages resulting therefrom.

§ 331-a. **Excessive loads on unsafe bridges.** Whenever by order of the town board of any town in which a bridge, sluice or culvert is located or, if a bridge, sluice or culvert connects two towns, by order of the town boards of such towns, a notice shall be erected upon each end of such bridge, sluice or culvert prohibiting the use of such bridge, sluice or culvert for loads in excess of ten tons, any person, firm or corporation transporting or causing to be transported over any such bridge, sluice or culvert any traction engine, tractor, portable piece of machinery or any vehicle or load weighing ten tons or over shall be guilty of a misdemeanor, and upon conviction of a first offense shall be liable to a fine of not to exceed twenty-five dollars. A second offense shall be a misdemeanor punishable by a fine or imprisonment or both.

Added by L. 1917, ch. 568.

§ 332. **Law of the road.** 1. Whenever any persons traveling with any carriages, or riding horses or other animals, shall meet on any turnpike road or highway, the persons so meeting shall seasonably turn their carriages, horses, or other animals to the right of the center of the road, so as to permit such carriages, horses, or other animals to pass without interference or interruption.

2. Any carriage or the rider of a horse or other animal, overtaking another shall pass on the left side of the overtaken carriage, horse or other animal. When requested to do so, the driver or person having charge of any carriage, horse or other animal, traveling, shall, as soon as practicable, turn to the right, so as to allow any overtaking carriage, horse or other animal free passage on his left.

3. In turning corners to the right, carriages, horses or other animals shall keep to the right of the center of the road. In turning corners to the left, they shall pass to the right of the center of intersection of the two roads.

4. Any person neglecting to comply with, or violating any provision of this section shall be liable to a penalty of five dollars to be recovered by the party injured, in addition to all damages caused by such neglect or violation.

See Penal Law, § 1425.

§ 333. **Trees; to whom they belong.** All trees standing or lying on land within the bounds of any highway, shall be for

the proper use of the owner or occupant of such land, except that they may be required to repair the highway or bridges of the town. Where a right of way has been or shall be acquired, under the provisions of this chapter, for a state or county highway, the owner of the fee shall have and may harvest for his own use the fruit upon all fruit-bearing trees left standing from time to time within the right of way so acquired, until forbidden in writing by the governing board of the political subdivisions in which the title to such right of way vests.

Amended by L. 1916, ch. 147.

§ 334. **Injuring fruit or shade trees.** It shall be unlawful for any person or persons whatsoever in this state to hitch any horse or other animal to or leave the same standing near enough to injure any fruit or forest tree growing within the bounds of the public highway, or used as a shade or ornamental tree around any schoolhouse, church or public building, or to cut down or mutilate in any way any such ornamental or shade tree; but the right of property owners along the highway to cultivate, train and use such shade trees shall not be impaired or abridged hereby. Any person or persons guilty of violating the provisions of this section shall be deemed guilty of misdemeanor, and shall be punishable by a fine of not less than five dollars, nor more than twenty-five dollars for each such offense, and in case of failure to pay any fine imposed, may be committed to jail, not exceeding one day for each dollar of such fine. Courts of special sessions having jurisdiction to try misdemeanors, as provided by section fifty-six of the code of criminal procedure, shall have exclusive jurisdiction to try offenders in all cases occurring in the same manner as in other cases, where they now have jurisdiction, and subject to the same power of removal, and to render and enforce judgments, to the extent herein provided. All fines collected under the provisions of this act shall be paid when the offense is committed in a town outside of incorporated villages, to the supervisor of the town, to be used as the town board and town superintendent may direct. When the offense is committed in any village of the county, which by law is constituted a separate road district, the fine shall be paid to the treasurer of said village, to be used as the board of trustees may direct.

§ 335. **Penalty for falling trees.** If any person shall cut down any tree on land not occupied by him, so that it shall fall into any highway, river or stream, unless by the order and consent of the

occupant, the person so offending shall forfeit to such occupant the sum of one dollar for every tree so fallen, and the like sum for every day the same shall remain in the highway, river or stream.

§ 336. **Fallen trees to be removed.** If any tree shall fall, or be fallen by any person from any inclosed land into any highway, any person may give notice to the occupant of the land from which the tree shall have fallen, to remove the same within two days; if such tree shall not be removed within that time, but shall continue in the highway, the occupant of the land shall forfeit the sum of fifty cents for every day thereafter, until the tree shall be removed.

§ 337. **Penalties, how recovered.** All penalties or forfeitures given in this chapter, and not otherwise specially provided for, shall be recovered by the town superintendent, in the name of the town in which the offense shall be committed; and when recovered, shall be applied by them in improving the highways and bridges in such town.

§ 338. **Acquisition of plank roads.** The board of supervisors of any county, except a county wholly within the city of New York, except the county of Erie, may by a vote of a majority of the members thereof, by resolution, determine to acquire the rights and franchises of any individual or corporation, lawfully entitled to exact toll or charge for walking, riding or driving over any plankroad or turnpike, or a bridge within such county, erected over any unnavigable stream, or over the Hudson river above Waterford. Upon the adoption of such a resolution, the board of supervisors shall acquire such rights, franchises and property by purchase, if able to agree with the owners thereof, and otherwise by condemnation in the name of the county.

Amended by L. 1914, ch. 200.

§ 339. **Borrowing money; bonds.** The board of supervisors of such county may borrow money for the acquisition of such rights, franchises, and property, and may issue the bonds or other evidences of indebtedness of the county therefor, but such bonds or other evidences of indebtedness shall not bear a rate of interest exceeding five per centum per annum and shall not run for a longer period than twenty years and shall not be sold for less than par.

§ 340. **Raising money to pay bonds and interest.** Except in the counties of Rensselaer, Onondaga, Albany and Columbia, the amount of such bonds in whole or in part together with the interest thereon may be apportioned by the boards of supervisors upon the

towns, cities and villages constituting separate highway districts, in which such plankroad, turnpike or bridge is located, in such proportions as the boards may deem just and the amount so apportioned to each municipality for the payment of the principal and interest of such bonds shall be annually levied and collected at the same time and in the same manner as money for other county charges. In the counties of Rensselaer and Columbia, the boards of supervisors, in making up the annual tax budget of the counties, shall each year levy and assess upon and against the taxable property in said counties in addition to the amounts levied and assessed for other county charges, an amount sufficient to pay the interest falling due and payable on the said bonds during such year, and also an amount sufficient to pay the proportion of the years fixed at the time during which said bonds shall run from their issue to maturity. The amount raised by tax in each year for the payment of the principal of said bonds shall be preserved intact by the county treasurers of said counties until said bonds mature and are payable, and upon the maturity of said bonds, said county treasurer shall pay the same in full out of the moneys so raised by annual tax therefor and shall thereupon take back said bonds with receipts for the payment thereof and deliver them to the boards of supervisors of said counties for cancellation. Said county treasurer shall deposit at interest the said moneys yearly raised by tax for payment of the principal of said bonds in such bank or depository as shall be designated by the boards of supervisors of said counties, and the amount realized from the interest thereon shall be used for the purposes of the said counties under the direction of the said boards of supervisors.

§ 341. **Roads so acquired to be part of highway system.** A plankroad, turnpike or bridge acquired pursuant to this article shall become a part of a highway system of such county and of the towns, cities and villages in which the same is located, and shall thereafter be repaired and maintained in the same manner as the other highways or bridges therein.

§ 342. **When road is in two or more counties.** When a plankroad, turnpike, toll road or bridge is partly in one county and partly in another, the boards of supervisors of the said counties shall act together in the manner prescribed above, and determine the amount to be paid to said plankroad, turnpike, toll road or bridge company, by each county, and such amount against each county, after such determination, shall be paid by each county.

§ 343. **Albany post road; railroad tracks thereon.** The old established road along the valley of the Hudson river from the city of New York to the city of Albany, known as the Albany post road, shall be a public highway for the use of the traveling public forever. The said highway shall be kept open and free to all travelers, and shall not be obstructed in any way by any obstacle to free travel. No trustees of any village or corporation of any city upon its route, or town superintendents of highways of towns, or any other person or board whatever, shall have any power or authority to authorize or license the laying of any railroad track upon said highway, except to cross the same, and any such action shall be void and of no effect. This section shall not apply to any portion of said road within the city of New York, nor shall it apply to the road of the president, directors and company of the Rensselaer and Columbia turnpike, nor to the town of Cortlandt or the village of Sing Sing, in Westchester county.

Amended by L. 1910, ch. 658.

§ 344. **Lighting roads, highways and bridges.** The town board of any town, subject to the approval of the commissioner of highways, may from time to time provide for lighting dangerous portions of any road or highway defined by section three of this chapter or constructed or improved under the provisions of section three hundred and twenty of this chapter, and of bridges located thereon. The initial action of the board shall be in the form of a proposal for submission to the commissioner. The roads and portions thereof to be lighted, and the manner of lighting, shall be set forth in such proposal. Such proposal shall be embodied in a resolution. The lighting of one or more such roads, highways or bridges, or either, may be proposed in a single resolution. The board may provide for such lighting, if its proposal is so approved, or, if modifications are suggested by the commissioner, may adopt such modifications and provide for such lighting in conformity therewith. The expense of installing, maintaining and caring for such lights shall be a town charge, and the moneys therefor shall be provided and appropriated in the same manner as for other town expenses. The furnishing of light under this section may be provided for by contract or otherwise; but nothing herein contained shall be deemed to authorize the town board to acquire, construct or establish a gas or electric lighting plant

for the above purposes. The installation of lights, fixtures and connections shall be done under the supervision of the county superintendent of highways. The town board may provide for the care of such lights in such manner as it may deem proper. The board may, in its discretion, at any time discontinue the lighting of any road, highway or bridge, or portion thereof, provided for under this section.

Added by L. 1917, ch. 367.

### ARTICLE XIII.

#### **Saving Clause; Laws Repealed; When to Take Effect.**

**Section 350.** Transfer of powers and duties of state engineer.

351. Transfer of records; eligibility of present employees.

352. County engineers and superintendents of highways to be continued in office.

353. Pending actions or proceedings.

354. Saving clause.

355. County highway maps preserved.

356. Construction.

357. When to take effect.

§ 350. **Transfer of powers and duties of state engineer.** On and after the taking effect of this chapter, and the appointment and qualification of the state commission as herein authorized, all the powers and duties of the state engineer in respect to highways and bridges, conferred and imposed by any statute of this state, shall be transferred to the department of highways to be exercised and performed by the state commission of highways as provided herein.

§ 351. **Transfer of records; eligibility of present employees.** The state engineer shall transfer and deliver to the state commission of highways all contracts, books, maps, plans, papers and records of whatever description, in his possession when such commission is appointed and have qualified, pertaining to the construction, improvement, maintenance and supervision of highways and bridges and such commission is authorized at such time to take possession of all such contracts, books, maps, plans, papers and records. The commission may also retain in its employment resident and other engineers, levelers, rodmen, clerks and employees engaged or connected with the department of highways in the office of the state engineer, or employed by him in connection with the powers and duties exercised and performed by him in respect to highways and bridges, and all such engineers,

clerks and employees shall be eligible to transfer and appointment to positions under the commission.

§ 352. **County engineers and superintendents of highways to be continued in office.** County engineers and superintendents of highways in office when this chapter takes effect shall be continued in office during their present term of office and until the district or county superintendents shall have been appointed and have qualified as provided in this chapter. Such county engineers and superintendents of highways shall exercise the powers and perform the duties hereby conferred and imposed upon district or county superintendents until the appointment and qualification of a district or county superintendent as above provided. Upon the appointment and qualification of a district or county superintendent for the county for which such county engineer or superintendent of highways is appointed all contracts, books, maps, plans, papers, and records pertaining to the construction, improvement, maintenance and supervision of highways in such county shall be transferred to such district or county superintendent.

§ 353. **Pending actions or proceedings.** This chapter shall not affect pending actions or proceedings, civil or criminal, pertaining to the construction, improvement, maintenance, supervision or control of highways and bridges, brought by or against the state engineer, or county engineer or a county superintendent of highways, or a commissioner of highways, under the provisions of any statute hereby repealed, but the same may be prosecuted or defended in the same manner by the commission or by the officer having jurisdiction in respect thereto. Any investigation, examination or proceeding undertaken, commenced or instituted by the state engineer, county engineer or highway commissioner or either of them relating to highways or bridges may be conducted or continued to a final determination by the proper officer hereunder, in the same manner, and under the same terms and conditions, and with the same effect as though this chapter had not been passed.

§ 354. **Saving clause.** The repeal of a law, or any part of it specified in the annexed schedule shall not affect or impair any contract, or any act done, or right accruing, accrued or acquired or any penalty, forfeiture, or punishment incurred prior to the time when this chapter or any section thereof takes effect, under

or by virtue of the laws so repealed, but the same may be asserted, enforced, prosecuted, or inflicted, as fully and to the same extent, as if such laws had not been repealed. The provisions of this chapter shall not affect or impair any act done or right accruing, accrued or acquired under or in pursuance of any resolution adopted by the board of supervisors of a county, on or before the thirty-first day of December, nineteen hundred and eight, requesting the construction or improvement of a highway therein, as provided in chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof, or under or in pursuance of any resolution adopted on or before such date by a board of supervisors, under such act and the acts amendatory thereof, providing for the construction or improvement of a highway in a county in accordance with maps, plans and specifications submitted to such board by the state engineer, or under or in pursuance of any contract for the construction or improvement of a highway, awarded as provided in such chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof. All further proceedings in respect to such highway shall be taken in accordance with the provisions of this chapter.

§ 355. County highway maps preserved. The county highways to be selected by the commission for construction or improvement, as provided in this chapter, shall be the highways in the respective counties designated upon the map of the highways of the state, prepared by the state engineer as provided by law, and approved by the legislature by chapter seven hundred and fifteen of the laws of nineteen hundred and seven; except the highways on such map which have been designated and described as state highways by section one hundred and twenty of this chapter. Such map shall remain in full force and effect notwithstanding the repeal of such chapter seven hundred and fifteen of the laws of nineteen hundred and seven by this chapter; except that the board of supervisors of any county is hereby authorized to modify the designation of county highways on such map by resolution duly adopted by a majority vote of the members of such board, provided the total mileage as originally designated upon the county map in such county is not thereby materially increased. A certified copy of such resolution shall be transmitted to the commission, or to the state engineer if the same be adopted prior to the appointment and qualifications of the commission.

§ 356. **Construction.** Wherever the term state engineer shall occur in any law, contract or document such term shall be deemed to refer to the state commission of highways as established by this chapter so far as such law, contract or document pertains to matters which are within the jurisdiction of such commission of highways. Wherever the term county engineer or county superintendent of highways is used in any such law, contract or document such term shall be deemed to refer to and include the county or district superintendent having jurisdiction of the matter contained in such law, contract or document.

The provisions of this chapter so far as they are substantially the same as those existing at the time they shall take effect, shall be construed as a continuation of such laws, modified or amended, according to the language employed in this chapter, and not as new elements. References in laws not repealed to provisions of law incorporated in this chapter and repealed, shall be construed as applying to the provisions so incorporated.

§ 357. **When to take effect.** This chapter shall take effect the first day of January, nineteen hundred and nine, except as to the provisions specified as follows:

1. The provisions of sections forty-three, ninety, ninety-one, ninety-four, ninety-five, ninety-nine, and one hundred, relating to highway commissioners, estimates of expenditures, duties of town board in respect thereto, levy of taxes, the limitation of amounts to be raised, submission of propositions at town meetings, assessments of village property and statements by the clerk of the board of supervisors to the comptroller, shall take effect immediately.

2. The provisions of sections one hundred and thirty and one hundred and thirty-one of this chapter, pertaining to the award of contracts for the construction of county highways shall take effect immediately and shall apply to contracts to be awarded under chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight and the acts amendatory thereof, prior to January first, nineteen hundred and nine; and until the commission shall have been appointed and have duly qualified, the state engineer and surveyor shall exercise the powers and perform the duties conferred upon the said commission by the foregoing sections.

3. The provisions of section one hundred and seventy-nine, relating to the sprinkling of state and county highways and the

removal of refuse therefrom; the provisions of section two hundred and eighty, relating to the construction or improvement of highways at the joint expense of a county and town, and the provisions of section three hundred and fifteen relating to the modification of maps by boards of supervisors and the provisions of this section shall take effect immediately.

## BOND ISSUE TO BE VOTED UPON AT THE GENERAL ELECTION.

Section 1. **Bonds authorized.** There shall be issued, in the manner and at the times hereinafter recited, bonds of the state in an amount not to exceed fifty million dollars, which bonds shall be sold by the state and the proceeds thereof paid into the state treasury, and so much thereof as shall be necessary expended for the purpose of constructing and improving the state and county highways as defined in the highway law. Said bonds when issued shall be exempt from taxation.

§ 2. **Sale; interest; tax to pay; sinking fund.** The comptroller is hereby directed to cause to be prepared the bonds of this state to an amount not to exceed fifty million dollars, said bonds to bear interest at the rate of not to exceed four per centum per annum, which interest shall be payable semi-annually in the city of New York. Said bonds shall be issued for a term of fifty years from their respective dates of issue, and shall be sold for not less than par. The comptroller is hereby charged with the duty of selling said bonds to the highest bidder after advertising for a period of twenty consecutive days, Sundays excepted, in at least two daily newspapers printed in the city of New York and one in the city of Albany. Advertisements shall contain a provision to the effect that the comptroller, in his discretion, may reject any or all bids made in pursuance of said advertisements, and, in the event of such rejection, the comptroller is authorized to readvertise for bids in the form and manner above described as many times as in his judgment may be necessary to effect a satisfactory sale. Said bonds shall be sold in such lots and at such times as may be required for the purpose of making partial or final payments on work contracted for in accordance with the provisions of this act, and for other payments lawfully to be made under the provisions thereof. There is hereby imposed a direct annual tax to pay and sufficient to pay the interest on each bond

issued under this act as it falls due, and to pay and sufficient to pay and discharge the principal of each of such bonds within fifty years from the date thereof. The rate of such annual tax shall be five one-thousandths of a mill on each dollar of valuation of real and personal property in this state subject to taxation, for each and every one million dollars, or fraction thereof, in par value of said bonds issued under this act, and outstanding or to be outstanding during the fiscal year during which the amount of such tax is computed. The tax imposed, as herein provided, shall be assessed, levied and collected in the manner prescribed by law, and shall be paid by the several county treasurers into the treasury of the state. The proceeds of such tax shall be invested by the comptroller in securities in which he is authorized by law to invest the trust and sinking funds of the state, and together with the interest arising therefrom, any premiums received on the sale of said bonds, and interest accruing on deposits of money received from the sale of said bonds or from miscellaneous sources shall constitute a sinking fund which is hereby created. Said fund shall be used solely for the purpose of paying the principal and interest of bonds issued in accordance with the provisions of this act.

§ 3. **Moneys divided between state and county highways.** The sum of twenty million dollars of the moneys hereby authorized to be raised shall be used solely for the construction and improvement of state highways as defined by section three of the highway law, and the sum of thirty million dollars of the aforesaid moneys shall be used solely for the construction and improvement of county highways as defined by section three of the highway law.

§ 4. **Apportionment of moneys.** The state commission of highways is hereby directed, immediately after this law shall take effect, to equitably apportion among the counties containing towns the total amount of money hereby authorized. Said apportionment for each of said counties shall be computed on the following basis: On the population as fixed by the federal census of nineteen hundred and ten; on the aforesaid measured mileage of public highways outside of cities and villages as obtained pursuant to section sixty-nine of chapter thirty of the laws of nineteen hundred and nine, and on the total area; and the sum of one-third of each of these three factors thus obtained for each of said counties shall constitute such equitable apportionment.

**§ 5. Routes of state highways.** The routes of the state highways to be constructed and improved hereunder are those specifically set forth and described in section one hundred and twenty of the highway law, being chapter thirty of the laws of nineteen hundred and nine, and the acts amendatory thereof and supplemental thereto.

**§ 6. Routes of county highways.** The routes of county highways to be constructed and improved hereunder are such as shall be determined by the state commission of highways with the approval of the boards of supervisors of the respective counties as set forth and prescribed by the highway law.

**§ 6-a. Unexpended balances; how to be used.** If moneys authorized by this act to be raised and which have been apportioned before the taking effect of this section to a county for use in the construction of state highways cannot be used within such county for that purpose, or if any of such moneys which have been apportioned before the taking effect of this section to a county for use in the construction of county highways cannot be used within such county for that purpose, under the foregoing provisions of this act and in the manner herein prescribed, the unexpended balances of such moneys apportioned pursuant to section four shall be available, after appropriation by the legislature, for use in the discretion of the state commissioner of highways in the construction, reconstruction or widening of state or county highways as defined in the highway law or of such other highways as he may determine to be necessary to connect the systems of state highways, county highways or highways improved by federal aid. Such commissioner shall expend within any county having an unexpended balance of moneys originally apportioned to it by section four of this act, for the construction, reconstruction or widening of such highways, one-half of such unexpended balance, and such commissioner may expend within any other county or counties for the same purposes the remainder of such unexpended balance. In the use of such moneys in the construction, reconstruction or widening of any state, county or connecting highway, the county within which such highway is located shall contribute to the total cost thereof in the same manner and to the same extent and in the same proportion as is now provided by article six of the highway law in connection with the improvement of county highways within such county.

§ 2. This law shall not take effect until it shall at a general election have been submitted to the people and have received a majority of all the votes cast for and against it at such election; and the same shall be submitted to the people of this state at the general election to be held in November, nineteen hundred and eighteen. The ballots to be furnished for the use of the voters upon the submission of this law shall be in the form prescribed by the election law, and the proposition or question to be submitted shall be printed thereon in substantially the following form, namely: "Shall chapter (here insert the number of the chapter) of the laws of nineteen hundred and eighteen, entitled 'An act to amend chapter two hundred and ninety-eight of the laws of nineteen hundred and twelve, authorizing the sale of bonds for the construction and improvement of state and county highways, in relation to providing for the disposition of certain unexpended balances for highway improvement; and to provide for a submission of the same to the people to be voted upon at the general election to be held in the year nineteen hundred and eighteen,' be approved?"

Added by L. 1918, ch. 626.

§ 7. **Control of construction.** The work of construction and improvement of the aforesaid highways shall be under the management, supervision and control of the state commission of highways, and the provisions of articles six and seven of chapter thirty of the laws of nineteen hundred and nine, known as the highway law and the acts amendatory thereof and supplemental thereto, so far as they may be applicable and not inconsistent herewith, shall apply to and govern the work authorized by this act. The maps, plans, routes, specifications, resolutions and acts heretofore prepared or adopted for use in the improvement and construction of state and county highways shall be applicable to the work authorized under this act.

§ 8. **Surplus.** Any surplus arising from the sale of bonds over and above the cost of the work herein provided for shall be applied to the sinking fund for the payment of said bonds.

§ 9. **Submission of law to people.** This law shall not take effect until it shall at a general election have been submitted to the people and have received a majority of all the votes cast for and against it at such election; and the same shall be submitted

to the people of this state at the general election to be held in November, nineteen hundred and twelve. The ballots to be furnished for the use of the voters upon the submission of this law shall be in the form prescribed by the election law and the proposition or question to be submitted shall be printed thereon in substantially the following form, namely: "Shall chapter (here insert the number of the chapter) of the laws of nineteen hundred and twelve, entitled 'An act making provision for issuing bonds to the amount of not to exceed fifty million dollars for the purpose of constructing and improving state and county highways, and providing for a submission of the same to the people to be voted upon at the next general election to be held in the year nineteen hundred and twelve,' be approved?"

L. 1912, ch. 298.

## SPECIAL ACTS

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**AN ACT** authorizing the termination of certain highway contracts, conferring jurisdiction upon the court of claims to hear and determine claims and make awards for increased costs incurred in war contracts, and making an appropriation for the completion of unfinished work.

**Section 1. Definition.** The term "war contract" or "war contracts," when used in this act, shall mean any contract heretofore executed by the state commission of highways on behalf of the state of New York as one of the parties thereto, either for the construction or improvement or for the repair or maintenance of state or county highways as defined by the highway law, which contract was made and executed prior to the sixth day of April, nineteen hundred and seventeen, the date of the declaration of war between the United States of America and the Imperial German government, or made and executed after April sixth, nineteen hundred and seventeen, on bids submitted to the commission before that date, and wherein the date of final completion either as originally specified or as subsequently extended by law either expressly or by implication was on or after said April sixth, nineteen hundred and seventeen, including also those contracts which now are or hereafter may be canceled or abrogated for nonperformance and which by their terms are included within the provisions of this section.

§ 2. The state commissioner of highways is hereby authorized, empowered and directed to enter an official order terminating any war contract and releasing the contractor and the surety on the bond accompanying such contract from any further obligation or responsibility thereunder, provided that said contractor shall not have violated the contract prior to April sixth, nineteen hundred and seventeen, by unreasonable delay in its performance or by other substantial breach of the provisions thereof, other than the failure to complete the same; and provided the contractor and the surety shall, within thirty days after the date when this act becomes effective, execute in a form to be approved by the attorney-general and file in the office of the state commission of highways a request for such termination and a waiver of any and all claims against the state for damages and anticipated

profits, which request shall be accompanied by a waiver and release by the surety to any uncollected premiums on the contractor's bond.

§ 3. Upon the filing in his office, in the form and within the time prescribed, of the request and waivers specified in section two, the said commissioner shall prepare, with all due diligence, a final account of all labor performed and material furnished by the contractor at the contract unit prices therefor, and after deducting therefrom all previous payments which may have been made shall pay the balance remaining to the contractor, his successor or assignees, or if liens or other incumbrances are filed against the contract to such persons as may be directed by the court.

§ 4. The provisions of this act shall also apply to any war contract which may have been suspended under section one hundred and thirty-two of the highway law, as amended by chapter four hundred and thirteen of the laws of nineteen hundred and eighteen.

§ 5. A contract terminated as provided in this act shall be completed under the direction and supervision of the state commissioner of highways by a contract awarded after competitive bidding as provided in the highway law, and the advertisement for proposals, receipts of bids, award and execution of such contract, and the conduct of the work thereunder and acceptance thereof by the commission shall be in accordance with, and governed by the provisions of, the highway law which may be applicable thereto.

§ 6. Jurisdiction is hereby conferred upon the court of claims to hear all claims for alleged increase in the cost of labor, materials or the transportation of materials incurred after April sixth, nineteen hundred and seventeen, in the doing and performance of war contracts which have been completed, accepted and for which final payment has been made, including contracts advertised for letting between April sixth, nineteen hundred and seventeen, and April seventeenth, nineteen hundred and seventeen, on estimates prepared by the department of highways prior to April sixth, nineteen hundred and seventeen, and also of any war contract terminated under the provisions of this act. The court of claims shall determine the increased cost, whether the whole or a part, which is properly chargeable against the state and the portion of such increased cost, if any, which may be paid

by a subdivision or subdivisions of the state as hereinafter provided on the basis on which the state and the subdivisions of the state were obligated to pay for the work done under the contract and render judgment against the state for the amount so determined as chargeable to the state, which judgment shall be paid as other judgments against the state are paid. No judgment shall be rendered, however, for an amount greater than thirty-five per centum of the contract price of labor, materials and the transportation of materials furnished or supplied during the year nineteen hundred and seventeen, nor greater than fifty per centum of the contract price of labor, materials and transportation of materials furnished or supplied during the year nineteen hundred and eighteen. No claim for relief under this section shall be maintained against the state unless the claimant shall file his claim within six months after his right of action shall accrue under the provisions of this act. Any subdivision of the state is authorized and empowered to raise by taxation or by an issue of its obligations such an amount as may have been found by the court of claims to be the proportion which said subdivision may pay for the increased cost as so determined, and to pay said amount to the contractor entitled to receive the same.

§ 7. Nothing contained in this act shall prevent the state commissioner of highways from proceeding in accordance with the provisions of section one hundred and thirty-two of the highway law and the terms of the contract with respect to any contract where the same is neither progressed nor an application for its termination filed as provided in this act.

§ 8. The sum of three million dollars (\$3,000,000), or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated and shall be expended in payment of the state's share of the excess cost of the completion of work embraced in any contract dated not later than December thirty-first, nineteen hundred and eighteen, for highway improvement which has been or may hereafter be abrogated for nonperformance under the provisions of section one hundred and thirty-two of the highway law or terminated under the provisions of this act; provided, however, that where a county or other political subdivision of the state has heretofore in the first instance, and in accordance with the provisions of the highway law, provided for the payment by it of a portion of the cost of the work embraced in such contract, such county or

other political subdivision shall, before any moneys from this appropriation become available for the state's share of the cost of completion, appropriate and make available to the requisition and draft of the state commission of highways such an amount as may be necessary to pay the share of such excess cost to be borne by such county or other political subdivision; the method by which the amount of such share shall be determined to be that provided by the highway law for the determination of the share to be borne in the first instance by such county or other political subdivision. The moneys hereby appropriated shall be payable by the treasurer on the warrant of the comptroller on the requisition or draft of the state commissioner of highways.  
L. 1919, ch. 459.

**AN ACT reappropriating an unexpended balance for the purpose of the construction and improvement of public highways.**

Section 1. The sum of twenty-two thousand six hundred and ninety-one dollars and sixty-five cents (\$22,691.66), being the unexpended balance of the appropriation made by chapter five hundred and sixteen of the laws of nineteen hundred and fourteen and reappropriated by chapter six hundred and forty-six of the laws of nineteen hundred and sixteen, and the sum of seven million one hundred and sixty-two thousand three hundred and eighty-nine dollars and seventeen cents (\$7,162,389.17), being the unexpended balance of the appropriation made by chapter five hundred and ninety-seven of the laws of nineteen hundred and sixteen, to be expended for the construction and improvement of public highways in accordance with the provisions of chapter two hundred and ninety-eight of the laws of nineteen hundred and twelve, and article six of chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," are hereby reappropriated from the same funds and for the same purposes as provided in said acts.

L. 1918, ch. 164.

**AN ACT reappropriating an unexpended balance for the purpose of the construction and improvement of public highways.**

Section 1. The sum of four hundred and sixty-five thousand eight hundred and seventy-four dollars and fifty-six cents (\$465,874.56), being the unexpended balance of the appropriation made

by chapter five hundred and twenty-six of the laws of nineteen hundred and fourteen and reappropriated by chapter six hundred and forty-six of the laws of nineteen hundred and sixteen, to be expended for the construction and improvement of public highways in accordance with the provisions of article six of chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," is hereby reappropriated from the same funds and for the same purpose as provided in said act.

L. 1918, ch. 103.

**AN ACT making an appropriation for highway improvement purposes.**

Section 1. The sum of five million dollars (\$5,000,000), is hereby appropriated payable out of moneys realized from bonds issued in accordance with the provisions of chapter two hundred and ninety-eight of the laws of nineteen hundred and twelve. The moneys hereby appropriated shall be expended for the construction and improvement of public highways in accordance with the provisions of article six, chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," and the provisions of chapter two hundred and ninety-eight of the laws of nineteen hundred and twelve.

L. 1919, ch. 588.

**AN ACT making an appropriation for the employment of prisoners in the construction of state and county highways.**

Section 1. The sum of twenty-five thousand dollars (\$25,000) is hereby appropriated for the construction of state and county highways by the employment of prisoners confined in the state prisons, and for the purchase of implements and equipment, pursuant to the provisions of section one hundred and seventy-nine of the prison law. The prisoners engaged in such work shall be under the direction of the superintendent of state prisons and such work shall be performed upon the state and county highways to be designated by the state commissioner of highways. Of the money hereby appropriated not more than one thousand dollars shall be available to the state department of highways

for the payment of the salary of the engineer in charge of such construction, nor more than five hundred dollars shall be available to the state department of highways for the payment of the necessary expenses of such engineer.

L. 1919, ch. 635.

**AN ACT making appropriations for the maintenance and repair of improved state and county highways.**

Section 1. The several amounts named in this act, or so much thereof as may be necessary, are hereby appropriated from any moneys in the treasury not otherwise appropriated, together with any accrued interest on unexpended balances while in the hands of county treasurers, to be expended in accordance with the provisions of chapter thirty of the laws of nineteen hundred and nine as amended, being the highway law.

**DEPARTMENT OF HIGHWAYS.**

**Division No. 1.**

For the maintenance and repair of state and county highways including personal service; division expenses other than personal service; highways to be resurfaced either by contract or directly by the department; highways to be surface treated either by contract or directly by the department; highways to be reconstructed either by contract or directly by the department; and for general maintenance and repairs in the counties comprising division number one. The following amounts to be made immediately available for the purposes herein indicated: Columbia county, one hundred ten thousand two hundred thirty-two dollars (\$110,232); Dutchess county, one hundred seventeen thousand five hundred eleven dollars (\$117,511); Greene county, eighty-three thousand two hundred eighty dollars (\$83,280); Nassau county, twenty-five thousand eight hundred eighty-three dollars (\$25,883); Orange county, one hundred eighty thousand ten dollars (\$180,010); Putnam county, nineteen thousand five hundred twenty dollars (\$19,520); Rockland county, forty-eight thousand four hundred forty-five dollars (\$48,445); Suffolk county, sixty-seven thousand forty dollars (\$67,040); Ulster county, one hundred fifty-four thousand five hundred eighty-nine dollars (\$154,589); Westchester county, two hundred three thousand four hundred ninety dollars (\$203,490).

**SCHEDULE A.**  
**PERSONAL SERVICE.**

**Salaries, regular**

Assistant engineer at \$2,160 . . . . .	\$2,160 00	
Assistant engineer at \$1,980 . . . . .	1,980 00	
Junior assistant en- gineer, 2 at \$1,800 each . . . . .	3,600 00	
Inspector of engineer- ing work, at \$1,416	1,416 00	
Stenographer, at \$1,- 200 . . . . .	1,200 00	
Clerk, at \$1,500 . . . .	1,500 00	
	<hr/>	\$11,856 00

**Salaries, temporary**

Engineering, supervision and in- spection employees . . . . .	21,144 00	
	<hr/>	

Total for Schedule A . . . . . \$33,000 00

**SCHEDULE B.**  
**DIVISION EXPENSES.**  
**(Other than personal service.)**

**Supplies**

Office . . . . .	\$0 00	
Hired horses and vehicles and hired motor vehicles . . . . .	8,150 00	
Traveling expenses . . . . .	2,370 00	
Communication . . . . .	1,000 00	
Rents — office and storage . . . . .	2,400 00	
Advertising . . . . .	800 00	
	<hr/>	

Total for Schedule B . . . . . 14,720 00

**SCHEDULE C.**

For highways to be resurfaced either by contract  
or directly by the department . . . . . 358,640 00

## SCHEDULE D.

For highways to be surface treated either by contract or directly by the department.....	52,000 00
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## SCHEDULE E.

For highways to be reconstructed either by contract or directly by the department.....	86,000 00
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## SCHEDULE F.

## GENERAL MAINTENANCE AND REPAIR.

## Personal service

## Wages, temporary

## Patrolmen and patrol gang

labor . . . . .	\$115,000 00
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Foremen . . . . .	13,190 00
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## Laborers, mechanics, chauffeurs, teams and trucks....

148,350 00
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276,540 00
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## Industrial equipment

## Purchase of

Motor trucks ....	\$12,900 00
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## Stone crushing

plants . . . . .	2,200 00
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Concrete mixers ..	1,000 00
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Scarifiers . . . . .	700 00
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Graders . . . . .	670 00
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Unloaders . . . . .	950 00
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## Tools and general

plant . . . . .	2,780 00
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\$21,200 00
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## Rental of

## Rollers, crushers,

## distributors and

tools . . . . .	6,900 00
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28,100 00
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Supplies and repairs for motor vehicles and maintenance equipment . . . . .	13,750 00
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**Materials**

Including broken stone, sand,  
gravel, slag, bituminous mate-  
rials, cement, sulphite liquor,  
paint, lumber and general  
plant . . . . . 147,250 00

Total for Schedule F.... \$465,640 00

Total for Division No. 1.....\$1,010,000 00

**Division No. 2.**

For the maintenance and repair of state and county highways including personal service; division expenses other than personal service; highways to be surface treated either by contract or directly by the department; highways to be reconstructed either by contract or directly by the department, and for general maintenance and repairs in the counties comprising division number two. The following amounts to be made immediately available for the purposes herein indicated: Albany county, one hundred forty thousand two hundred dollars (\$140,200); Clinton county, thirty-nine thousand three hundred dollars (\$39,300); Essex county, forty-three thousand two hundred dollars (\$43,200); Rensselaer county, one hundred eighty-five thousand five hundred dollars (\$185,500); Saratoga county, one hundred twenty-five thousand seven hundred dollars (\$125,700); Schenectady county, eighty-five thousand four hundred dollars (\$85,400); Warren county, forty-six thousand eight hundred dollars (\$46,800); Washington county, forty-three thousand nine hundred dollars (\$43,900).

**SCHEDULE A.****PERSONAL SERVICE.****Salaries, regular**

Senior assistant engi-  
neer at \$2,820.... \$2,820 00  
Assistant engineer,  
grade 1, 4 at \$2,160 8,640 00  
Engineering assistant  
at \$1,080 ..... 1,080 00

Stenographer at \$1,-		
200 .....	1,200 00	
	<hr/>	\$13,740 00

Salaries, temporary		
Engineering, supervision and in-		
spection employees .....	21,260 00	
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Total for Schedule A.....		\$35,000 00
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## SCHEDULE B.

## DIVISION EXPENSES.

(Other than personal service.)

Supplies	
Office .....	\$0 00
Hired horses and vehicles and hired	
motor vehicles .....	4,090 00
Traveling expenses .....	2,310 00
Communication .....	800 00
Rents — office and storage.....	2,000 00
Advertising .....	800 00
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Total for schedule B.....	10,000 00
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## SCHEDULE C.

For highways to be resurfaced either by contract	
or directly by the department.....	0 00

## SCHEDULE D.

For highways to be surface treated either by con-	
tract or directly by the department.....	50,000 00

## SCHEDULE E.

For highways to be reconstructed either by contract	
or directly by the department.....	220,000 00

## SCHEDULE F.

## GENERAL MAINTENANCE AND REPAIR.

Personal service	
Wages, temporary	
Patrolmen and patrol gang	
labor .....	\$68,800 00

Foreman .....	10,944 00	
Laborers, mechanics, chauffeurs, teams and trucks....	163,800 00	
		<hr/> 243,544 00
Industrial equipment		
Purchase of		
Motor trucks .....	\$11,000 00	
Stone crushing plants .....	3,000 00	
Tools and general plant .....	1,000 00	
		<hr/> \$15,000 00
Rental of		
Rollers, crushers, distributors and tools .....		
		<hr/> \$15,000 00
Supplies and repairs for motor vehicles and maintenance equipment .....	7,000 00	
Materials		
Including broken stone, sand, gravel, iron ore tailings, bituminous materials, cement, sulphite liquor, paint, lumber, calcium chloride and general plant	124,456 00	
Storehouse		
Construction of .....	5,000 00	
Total for schedule F.....		<hr/> 395,000 00
Total for division No. 2.....		<hr/> \$710,000 00

### Division No. 3.

For the maintenance and repair of state and county highways including personal service; division expenses other than personal service; highways to be resurfaced either by contract or directly by the department; highways to be surface treated either by contract or directly by the department; and for general maintenance and repairs in the counties comprising division number three. The following amounts to be made immediately available for the

purposes herein indicated: Jefferson county, one hundred forty-one thousand six hundred sixty-one dollars (\$141,661); Saint Lawrence county, one hundred twelve thousand two hundred eighty-two dollars (\$112,282); Franklin county, fifty-five thousand three hundred forty-six dollars (\$55,346); Lewis county, forty-one thousand two hundred eleven dollars (\$41,211).

## SCHEDULE A.

## PERSONAL SERVICE

## Salaries, regular

Assistant engineer, 2	
at \$2,340 .....	\$4,680 00
Clerk, grade 7, at	
\$1,500 .....	1,500 00
Stenographer at \$1,-	
200 .....	1,200 00
	<hr/>
	\$7,380 00

## Salaries, temporary

Engineering, supervision and in-	
spection employees .....	13,620 00
	<hr/>

Total for schedule A..... \$21,000 00

## SCHEDULE B.

## DIVISION EXPENSES.

(Other than personal service.)

Supplies	
Office .....	\$100 00
Hired horses and vehicles and hired	
motor vehicles .....	2,000 00
Traveling expenses .....	1,500 00
Communication .....	700 00
Rents — office and storage.....	1,000 00
Advertising .....	500 00
	<hr/>

Total for schedule B..... 5,800 00

## SCHEDULE C.

For highways to be resurfaced either by contract  
or directly by the department..... 107,500 00

## SCHEDULE D.

For highways to be surface treated either by contract or directly by the department. .... 32,500 00

## SCHEDULE E.

For highways to be reconstructed either by contract or directly by the department. ....

## SCHEDULE F.

## GENERAL MAINTENANCE AND REPAIR.

## Personal service

## Wages, temporary

Patrolmen and patrol gang labor .....	\$44,000 00
Foreman .....	4,800 00
Laborers, mechanics, chauffeurs, teams and trucks....	52,900 00
	<hr/>

101,700 00

## Industrial equipment

## Purchase of

. Motor trucks .....	\$7,600 00
Road rollers .....	3,500 00
Stone crushing plants .....	3,400 00
Tools and general plant .....	3,500 00
	<hr/>

\$18,000 00

## Rental of

Rollers, crushers, distributors and tools .....	2,000 00
	<hr/>

20,000 00

## Supplies and repairs for

Motor vehicles and maintenance equipment .....	7,700 00
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## Materials

Including broken stone, sand, gravel, iron ore tailings, bituminous materials, cement,

paint, lumber and general plant	54,300 00
Total for schedule F.....	183,700 00
Total for division No. 3.....	\$350,500 00

**DIVISION NO. 4.**

For the maintenance and repair of state and county highways including personal service; division expenses other than personal service; highways to be resurfaced either by contract or directly by the department; highways to be surface treated either by contract or directly by the department; and for general maintenance and repairs in the counties comprising division number four. The following amounts to be made immediately available for the purposes herein indicated: Fulton county, thirty-seven thousand one hundred twenty-five dollars (\$37,125); Hamilton county, sixty thousand five hundred seventy-eight dollars (\$60,578); Herkimer county, ninety-eight thousand six hundred ninety-one dollars (\$98,691); Madison county, forty-one thousand nine hundred fifty-nine dollars (\$41,959); Montgomery county, one hundred seventeen thousand one hundred nineteen dollars (\$117,119); Oneida county, one hundred forty-four thousand five hundred twenty-eight dollars (\$144,528).

**SCHEDULE A.****PERSONAL SERVICE.****Salaries, regular**

Assistant engineer, grade 2, at \$2,580.	\$2,580 00
Junior assistant en- gineer, grade 2, at \$1,560 .....	1,560 00
Clerk, grade 7, at \$1,500 .....	1,500 00
Stenographer at \$900	900 00
	<u>\$6,540 00</u>

**Salaries, temporary**

Engineering, supervision and in- spection employees .....	13,460 00
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Total for schedule A.....	\$20,000
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**SCHEDULE B.**  
**DIVISION EXPENSES.**  
 (Other than personal service.)

Supplies		
Office .....	\$25	00
Hired horses and vehicles and hired motor vehicles .....	3,200	00
Traveling expenses .....	500	00
Communication .....	350	00
Rents — office and storage.....	1,200	00
Advertising .....	400	00
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Total for schedule B.....	5,675	00

<b>SCHEDULE C.</b>		
For highways to be resurfaced either by contract or directly by the department.....	145,900	00

<b>SCHEDULE D.</b>		
For highways to be surface treated either by con- tract or directly by the department.....	61,000	00

<b>SCHEDULE E.</b>		
For highways to be reconstructed either by contract or directly by the department.....	.....	

**SCHEDULE F.**  
**GENERAL MAINTENANCE AND REPAIR.**

Personal service		
Wages, temporary		
Patrolmen and patrol gang labor	\$72,000	00
Foremen .....	10,000	00
Laborers, mechan- ics, chauffeurs, teams and trucks	80,000	00
<hr/>		
	\$162,000	00
Industrial equipment		
Purchase of		
Motor trucks and motor vehicles..	\$10,000	00

Concrete mixers ..	900 00	
Tools and general plant .....	3,500 00	
	<hr/>	
	\$14,400 00	
Rental of Rollers, distribu- tors, stone crush- ers and tools..	4,000 00	
	<hr/>	18,400 00
Supplies and repairs for Motor vehicles and maintenance equipment .....	6,000 00	
Materials Including broken stone, sand, gravel, bituminous materials, cement, paint, lumber and gen- eral plant .....	73,025 00	
Storehouse Construction of .....	8,000 00	
	<hr/>	
Total for schedule F.....	267,425 00	
	<hr/>	
Total for division No. 4.....	\$500,000 00	
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### DIVISION NO. 5.

For the maintenance and repair of state and county highways including personal service; division expenses other than personal service; highways to be resurfaced either by contract or directly by the department; highways to be surface treated either by contract or directly by the department; highways to be reconstructed either by contract or directly by the department, and for general maintenance and repairs in the counties comprising division number five. The following amounts to be made immediately available for the purposes herein indicated: Broome county, one hundred two thousand two hundred thirty dollars (\$102,230); Chenango county, seventy-six thousand sixty dollars (\$76,060); Delaware county, one hundred one thousand seven hundred fifty dollars (\$101,750); Otsego county, eighty-six thousand eight hundred sixty dollars (\$86,860); Schoharie county,

thirty-two thousand fifty dollars (\$32,050); Sullivan county, seventy-two thousand four hundred fifty dollars (\$72,450).

### SCHEDULE A.

#### PERSONAL SERVICE.

##### Salaries, regular

Assistant engineer, grade 2, at \$2,340.	\$2,340 00
Assistant engineer, grade 1, at \$2,160.	2,160 00
Junior assistant en- gineer, grade 2, 2 at \$1,800 .....	3,600 00
Junior assistant en- gineer, grade 2, 2 at \$1,680 .....	3,360 00
Stenographer at \$1,- 200 .....	1,200 00
	<hr/>
	\$12,660 00

##### Salaries, temporary

Engineering, supervision and in- spection employees .....	11,340 00
	<hr/>

Total for schedule A..... \$24,000 00

### SCHEDULE B.

#### DIVISION EXPENSES.

(Other than personal service.)

Supplies	
Office .....	\$100 00
Hired horses and vehicles and hired motor vehicles .....	3,500 00
Traveling expenses .....	1,600 00
Communication .....	500 00
Rents — office and storage.....	1,800 00
Advertising .....	500 00
	<hr/>

Total for schedule B..... 8,000 00

### SCHEDULE C.

For highways to be resurfaced either by contract  
or directly by the department..... 140,200 00

## SCHEDULE D.

For highways to be surface treated either by contract or directly by the department.....	47,000 00
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## SCHEDULE E.

For highways to be reconstructed either by contract or directly by the department.....	22,800 00
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## SCHEDULE F.

## GENERAL MAINTENANCE AND REPAIR.

## Personal service

## Wages, temporary

## Patrolmen and pa-

trol gang labor..	\$69,970 00
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Foremen .....	8,030 00
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## Laborers, mechan-

ics, chauffeurs,

teams and trucks	55,000 00
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	\$133,000 00
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## Industrial equipment

## Purchase of

## Motor trucks and

motor vehicles..	\$9,000 00
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Roller and scarifier	4,000 00
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Concrete mixers...	650 00
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## Pressure distrib-

utors .....	1,600 00
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## Tools and general

plant .....	1,850 00
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	\$17,100 00
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## Rental of

## Rollers, distribu-

tors, scrapers and

tools ..	2,000 00
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	19,100 00
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## Supplies and repairs for

## Motor vehicles and maintenance

equipment .....	4,000 00
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## Materials

Including broken stone, sand,

gravel, slag, bituminous ma-

terials, cement, paint, lumber and general plant .....	73,300 00
Total for schedule F.....	229,400 00
Total for division No. 5.....	<u>\$471,400 00</u>

### Division No. 6.

For the maintenance and repair of state and county highways including personal service; division expenses other than personal service; highways to be resurfaced either by contract or directly by the department; highways to be surface treated either by contract or directly by the department, and for general maintenance and repairs in the counties comprising division number six. The following amounts to be made immediately available for the purposes herein indicated: Cayuga county, seventy-four thousand eight hundred ninety dollars (\$74,890); Cortland county, thirty-six thousand nine hundred forty dollars (\$36,940); Onondaga county, two hundred twenty-nine thousand six hundred dollars (\$229,600); Oswego county, forty-eight thousand three hundred ninety dollars (\$48,390); Seneca county, twenty-three thousand one hundred ninety dollars (\$23,190); Wayne county, twenty-six thousand nine hundred ninety dollars (\$26,990).

### SCHEDULE A.

#### PERSONAL SERVICE.

##### Salaries, regular

Assistant engineer, at \$2,160 .....	\$2,160 00
Assistant engineer, at \$1,980 .....	1,980 00
Junior assistant engi- neer, 2 at \$1,560..	3,120 00
Junior assistant engi- neer, at \$1,440...	1,440 00
	<u>\$8,700 00</u>

##### Salaries, temporary

Engineering, supervision and in- spection employees .....	5,300 00
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Total for Schedule A..... \$14,000 00

## SCHEDULE B.

## DIVISION EXPENSES.

(Other than personal service.)

Hired horses and vehicles and hired		
motor vehicles .....	\$3,200 00	
Traveling expenses .....	1,500 00	
Communication .....	250 00	
Rents — office and storage .....	1,300 00	
Advertising .....	500 00	
	<hr/>	
Total for Schedule B.....		6,750 00

## SCHEDULE C.

For highways to be resurfaced either by contract or directly by the department.....	165,000 00
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## SCHEDULE D.

For highways to be surface treated either by con- tract or directly by the department.....	35,000 00
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## SCHEDULE E.

For highways to be reconstructed either by contract or directly by the department.....	.....
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## SCHEDULE F.

## GENERAL MAINTENANCE AND REPAIR.

Personal service	
Wages, temporary	
Patrolmen and pa- trol gang labor..	\$58,000 00
Foremen .....	9,000 00
Laborers, mechan- ics, chauffeurs, teams and trucks	81,550 00
	<hr/>
	\$148,550 00
Industrial equipment	
Purchase of	
Motor trucks and motor vehicles ..	\$6,700 00
Tools and general plant .....	2,000 00
	<hr/>
	8,700 00

## Supplies and repairs for

## Motor vehicles and maintenance

equipment . . . . .	10,000 00
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## Materials

Including broken stone, sand, gravel bituminous materials, cement, lumber, paint and gen- eral plant . . . . .	52,000 00
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Total for Schedule F . . . . .	\$219,250 00
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Total for Division No. 6 . . . . .	\$440,000 00
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## Division No. 7.

For the maintenance and repair of state and county highways including personal service; division expenses other than personal service; highways to be resurfaced either by contract or directly by the department; highways to be surface treated either by contract or directly by the department; highways to be reconstructed either by contract or directly by the department; and for general maintenance and repairs in the counties comprising division number seven. The following amounts to be made immediately available for the purposes herein indicated: Genesee county, sixty-nine thousand four hundred forty-seven dollars (\$69,447); Livingston county, one hundred sixty-one thousand two hundred twenty-two dollars (\$161,222); Monroe county, one hundred seventy-one thousand three hundred ninety-five dollars (\$171,395); Ontario county, one hundred twenty-two thousand seven hundred seventy-three dollars (\$122,773); Orleans county, thirty-two thousand forty-two dollars (\$32,042); Wyoming county, twenty-three thousand one hundred twenty-one dollars (\$23,121).

## SCHEDULE A.

## PERSONAL SERVICE.

## Salaries, regular

Assistant engineer, grade 1, at \$2,100.	\$2,100 00
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Junior assistant engi- neer, grade 2, 2 at \$1,800 . . . . .	3,600 00
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Junior assistant engineer, grade 1, 2 at		
\$1,200 . . . . .	2,400 00	
Stenographer . . . . .	1,200 00	
	<hr/>	\$9,300 00
Salaries, temporary		
Engineering, supervision and inspection employees . . . . .	21,700 00	
	<hr/>	
Total for Schedule A . . . . .		\$31,000 00

## SCHEDULE B.

## DIVISION EXPENSES.

(Other than personal service.)

Supplies		
Office . . . . .	\$50 00	
Hired horses and vehicles and hired motor vehicles . . . . .	5,000 00	
Traveling expenses . . . . .	2,750 00	
Communication . . . . .	200 00	
Rents — office and storage . . . . .	900 00	
Advertising . . . . .	500 00	
	<hr/>	
Total for schedule B . . . . .		\$9,400 00

## SCHEDULE C.

For highways to be resurfaced either by contract or directly by the department . . . . .	136,000 00
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## SCHEDULE D.

For highways to be surface treated either by contract or directly by the department . . . . .	65,000 00
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## SCHEDULE E.

For highways to be reconstructed either by contract or directly by the department . . . . .	79,000 00
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## SCHEDULE F.

## GENERAL MAINTENANCE AND REPAIR.

Personal service	
Wages, temporary	
Patrolmen and	
patrol gang labor	\$55,000 00

Foremen .....	6,500 00	
Laborers, mechan- ics, chauffeurs, teams and trucks	83,380 00	
	<hr/>	\$144,880 00
Industrial equipment		
Purchase of		
Motor trucks .....	\$7,600 00	
Rollers .....	2,400 00	
Tools and general plant .....	1,000 00	
	<hr/>	\$11,000 00
Rental of rollers, dis- tributors, crushers and tools .....	5,000 00	
	<hr/>	16,000 00
Supplies and repairs for motor vehicles and maintenance equip- ment .....		5,750 00
Materials		
Including broken stone, sand, gravel, slag, bituminous mate- rials, cement, paint, lumber and general plant .....		87,970 00
Storehouse, construction of.....		5,000 00
	<hr/>	
Total for schedule F.....		259,600 00
		<hr/>
Total for division No. 7.....		\$580,000 00
		<hr/> <hr/>

### Division No. 8.

For the maintenance and repair of state and county highways including personal service; division expenses other than personal service; highways to be resurfaced either by contract or directly by the department; highways to be surface treated either by contract or directly by the department, and for general maintenance and repairs in the counties comprising division number eight. The following amounts to be made immediately available for the purposes herein indicated: Allegany county, seventy-eight thousand one hundred ninety-nine dollars (\$78,199); Chemung

county, forty-four thousand five hundred forty-three dollars (\$44,543); Schuyler county, twenty-three thousand eight hundred forty-three dollars (\$23,843); Steuben county, two hundred fifty-seven thousand nine hundred sixteen dollars (\$257,916); Tioga county, forty thousand three hundred eight dollars (\$40,308); Tompkins county, fifty-nine thousand sixty-one dollars (\$59,061); Yates county, twenty-eight thousand two hundred thirty dollars (\$28,230).

## SCHEDULE A.

## PERSONAL SERVICE.

## Salaries, regular

Assistant engineer, grade 2, at \$2,580 .....	\$2,580 00
Junior assistant engineer, at \$1,800 .....	1,800 00
Junior assistant engineer, 2 at \$1,560 .....	3,120 00
Junior assistant engineer, at \$1,440 .....	1,440 00
Stenographer, at \$1,200.....	1,200 00
	<hr/>
	\$10,140 00

## Salaries, temporary

Engineering, supervision and in- spection employees .....	10,000 00
	<hr/>

Total for schedule A..... \$20,140 00

## SCHEDULE B.

## DIVISION EXPENSES.

(Other than personal service.)

## Supplies

Office .....	\$100 00
Hired horses and vehicles and hired motor vehicles .....	2,200 00
Traveling expenses .....	100 00
Communication .....	400 00
Rents — office and storage.....	1,600 00
Advertising .....	500 00
	<hr/>

Total for schedule B..... 4,900 00

## SCHEDULE C.

For highways to be resurfaced either by contract  
or directly by the department..... 150,000 00

## SCHEDULE D.

For highways to be surface treated either by con-  
tract or directly by the department..... 100,000 00

## SCHEDULE E.

For highways to be reconstructed either by contract  
or directly by the department.....

## SCHEDULE F.

## GENERAL MAINTENANCE AND REPAIR.

## Personal service

## Wages, temporary

## Patrolmen and

patrol gang labor \$52,500 00

Foremen ..... 13,000 00

## Laborers, mechan-

ics, chauffeurs,

teams and trucks 84,300 00

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\$149,800 00

## Industrial equipment

## Purchase of

## Motor trucks and

motor vehicles.. \$10,000 00

## Stone crushing

plants..... 3,500 00

Concrete mixers .. 1,000 00

Wagons ..... 1,700 00

## Gravel and screen-

ing outfits ..... 1,200 00

## Rotary street

sweepers ..... 2,500 00

## Tools and general

plant ..... 2,500 00

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\$22,400 00

Rental of rollers, crushers, distrib- utors and tools...	1,500 00	
		23,900 00
Supplies and repairs for motor vehicles and maintenance equip- ment .....		6,500 00
Materials		
Including broken stone, sand, gravel, slag, bituminous mate- rials, cement, paint, lumber and general plant.....	76,860 00	
Total for schedule F.....		\$257,060 00
Total for division No. 8.....		\$532,100 00

### Division No. 9.

For the maintenance and repair of state and county highways including personal service; division expenses other than personal service; highways to be resurfaced either by contract or directly by the department; highways to be surface treated either by contract or directly by the department; highways to be reconstructed either by contract or directly by the department, and for general maintenance and repairs in the counties comprising division number nine. The following amounts to be made immediately available for the purposes herein indicated: Cattaraugus county, fifty-one thousand four hundred forty-two dollars (\$51,442); Chautauqua county, twenty-six thousand four hundred twenty-eight dollars (\$26,428); Erie county, two hundred seventeen thousand seven hundred seventy dollars (\$217,770); Niagara county, one hundred ten thousand three hundred sixty dollars (\$110,360).

### SCHEDULE A.

#### PERSONAL SERVICE.

Salaries, regular	
Senior assistant engi- neer, at \$3,060...	\$3,060 00

Assistant engineer, 2		
at \$1,800 .....	3,600 00	
Junior assistant engineer, at \$1,560...	1,560 00	
Clerk, at \$1,500....	1,500 00	
Stenographer, at		
\$1,000 .....	1,000 00	
	<hr/>	\$10,720 00
Salaries, temporary		
Engineering, supervision and inspection employees .....	8,200 00	
	<hr/>	
Total for schedule A.....		\$18,920 00

## SCHEDULE B.

## DIVISION EXPENSES.

(Other than personal service.)

Supplies		
Office .....	\$100 00	
Hired horses and vehicles and hired motor vehicles .....	2,975 00	
Traveling expenses .....	400 00	
Communication .....	447 00	
Rents — office and storage.....	1,050 00	
Advertising .....	500 00	
	<hr/>	
Total for schedule B.....		5,472 00

## SCHEDULE C.

For highways to be resurfaced either by contract or directly by the department.....	50,000 00
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## SCHEDULE D.

For highways to be surface treated either by contract or directly by the department.....	35,000 00
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## SCHEDULE E.

For highways to be reconstructed either by contract or directly by the department.....	115,000 00
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## SCHEDULE F.

## GENERAL MAINTENANCE AND REPAIR.

## Personal service

## Wages, temporary

## Patrolmen and pa-

trol gang labor.. \$17,300 00

Foremen ..... 9,200 00

## Laborers, mechan-

ics, chauffeurs,

teams and trucks 60,238 00

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\$86,738 00

## Industrial equipment

## Purchase of

Motor trucks ..... \$7,600 00

Road scarifiers ... 950 00

concrete mixers ... 900 00

## Tools and general

plant ..... 700 00

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\$10,150 00

## Rental of

Rollers, crushers,

distributors and

tools ..... 0 00

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10,150 00

## Supplies and repairs for

## Motor vehicles and maintenance

equipment ..... 5,800 00

## Materials

Including broken stone, sand,

gravel, slag, bituminous ma-

terials, cement, paint, lumber,

and general plant..... 78,921 00

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Total for schedule ..... \$181,608 00

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Total for division No. 9..... \$406,000 00

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Grand total divisions 1 to 9.....\$5,000,000 00

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§ 2. The amounts shown to be appropriated for expenditure in the several counties of the state make up the total appropriation to be divided among the counties for maintenance and repair purposes, and the itemized schedules attached hereto are for the purpose of indicating the manner in which the amount to be expended in each county was arrived at.

§ 3. The amounts hereby appropriated for use in the several counties of the state shall be deposited with the county treasurer of such counties as provided by the highway law. Each county of the state shall be responsible to the state for all funds or moneys deposited with the treasurer thereof under this act and an action to recover any loss to or of such funds or moneys may be brought against the county by the comptroller of the state of New York in a court of competent jurisdiction.

§ 4. In addition to the amounts herein appropriated to be expended within the several counties of the state, there is also hereby appropriated the sum of five hundred thousand dollars (\$500,000), being in lieu of the ten per centum which may be retained from appropriations made for maintenance and repair of improved highways as provided by section one hundred seventy-one of the highway law, which amount shall remain in the state treasury, and so much thereof as shall be necessary may be expended for use in any county when the money herein appropriated for such county has been expended or obligated. This sum shall be paid out by the state treasurer upon the warrant of the comptroller drawn upon the requisition of the state commission of highways, issued when it becomes necessary to expend for the maintenance and repair of improved state and county highways in any county a greater sum than that herein appropriated for use in said county.

L. 1919, ch. 28.

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**AN ACT making an emergency appropriation for the state commission of highways for the maintenance and repair of improved state and county highways between Albany and New York.**

Section 1. The sum of one hundred thousand dollars (\$100,000), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for emergency purposes in the maintenance

and repair of improved state and county highways on the principal routes between New York and Albany; the expenditure thereof to be with the approval of the governor and in accordance with the provisions of section one hundred and seventy of the highway law.

§ 2. The money herein appropriated shall remain in the state treasury until required to meet obligations of the state commissioner of highways and shall be paid by the state treasurer upon the warrant of the comptroller upon the certificate of the state commissioner of highways for the purposes of this act.

L. 1917, ch. 734.

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**AN ACT making an emergency appropriation for the state commission of highways for the maintenance, repair and reconstruction of highways and bridges thereon.**

Section 1. The sum of one million dollars (\$1,000,000), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for emergency purposes in the maintenance, repair and reconstruction of improved state and county highways and town highways on the principal routes across the state which are now or may hereafter be extensively used by the federal government for the transportation of army trucks including the so-called Middle Country or Middle Island road extending from Smithtown Branch easterly about thirty-two miles more or less to the westerly limits of the unincorporated village or hamlet of Riverhead and used as a means of access to the United States army reservation in and about Camp Upton in Suffolk county; and not to exceed seventy-five thousand dollars (\$75,000) thereof may be expended for the purpose of temporarily repairing or strengthening bridges on such routes. Of the moneys herein appropriated, there may also be used, in addition to moneys available for the same purpose from town, county, or other sources, the sum of fifty thousand dollars (\$50,000) for the removal of obstructions caused by snow and ice on the principal routes hereinbefore referred to. Of the moneys herein appropriated, the sum of sixteen thousand dollars (\$16,000), or so much thereof as may be necessary, may be used at such time as may be found practicable for the purpose of

rebuilding or replacing the condemned bridge over the canal feeder known as the Chittenango creek in the village of Chittenango, town of Sullivan, county of Madison, which bridge is located on state route number six. The work authorized by this act is to be performed and the moneys expended under the direction of the state commissioner of highways in such a manner as in his judgment seems necessary in the exigencies and for the best interests of the state and subject to and with the approval of the governor.

§ 2. The money herein appropriated shall be paid by the state treasurer upon the warrant of the comptroller upon the certificate of the state commissioner of highways for the purposes of this act.

L. 1918, ch. 338.

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**AN ACT making appropriations for the contributions of the state for the repair and improvement of town highways in accordance with the requirements of section one hundred and one of the highway law and chapter one hundred and thirty-seven of the laws of nineteen hundred and eleven, and the repair and improvement of highways and bridges on Indian reservations in accordance with section one hundred and fifty-nine of the highway law.**

Section 1. The sum of two million, fifty thousand dollars (\$2,050,000) is hereby appropriated from any moneys in the state treasury not otherwise appropriated, payable by the state treasurer on the warrant of the comptroller. Such sum or so much thereof as may be necessary shall be available for the contributions of the state to the several towns based upon the amount of taxes levied therein, for the repair and improvement of town highways, sluices, culverts and bridges having a span of less than five feet, in the proportions fixed by section one hundred and one of the highway law, and for complying with the requirements of such section.

§ 2. The sum of eighty thousand dollars (\$80,000) is hereby appropriated from any moneys in the state treasury not otherwise appropriated, payable by the state treasurer on the warrant of the comptroller. Such sum or so much thereof as may be necessary shall be available for the contributions of the state to counties containing Indian reservations or reservation, or the minor por-

tion of a reservation, of an amount not less than thirty dollars per mile, based upon the entire mileage of the public highways within the reservation in such county, pursuant to section one hundred and fifty-nine of the highway law.

§ 3. The sum of twenty thousand dollars (\$20,000) is hereby appropriated from any moneys in the state treasury not otherwise appropriated, payable by the state treasurer on the warrant of the comptroller. Such sum or so much thereof as may be necessary shall be available for the contributions of the state for the construction and improvement of county roads as provided by chapter one hundred and thirty-seven of the laws of nineteen hundred and eleven.

L. 1919, ch. 102.

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**AN ACT** making an appropriation for the state's share of the cost of the construction and improvement of rural post roads within the state as provided under the provisions of an act of congress, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes," to be expended in accordance with article six-a of the highway law.

Section 1. The sum of five hundred and seventy-five thousand dollars (\$575,000) is hereby appropriated from any moneys in the state treasury not otherwise appropriated, payable by the state treasurer on the warrant of the comptroller. Such sum or so much thereof as may be necessary shall be available for the payment of fifty per centum of the cost of construction of roads within the state as provided by an act of congress, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes," approved July eleventh, nineteen hundred and sixteen, and by article six-a of the highway law; and for the payment of preliminary engineering charges by the state in the making of surveys and the preparation of necessary plans, specifications and estimates on such roads. The amount available in this state from the appropriation of the federal government for such construction for the fiscal year of the federal government is five hundred and one thousand four hundred and forty-four dollars and fifty-four cents.

L. 1919, ch. 163.

**AN ACT** making an appropriation for the payment by the state in the first instance of the federal government's share of the cost of construction and improvement of rural post roads within the state as provided under the provisions of an act of congress entitled "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes."

Section 1. The sum of one hundred thousand dollars (\$100,000). is hereby appropriated from any moneys in the state treasury not otherwise appropriated, payable by the state treasurer on the warrant of the comptroller. Such sum or so much thereof as may be necessary shall be available for the payment in the first instance of the share of the federal government of the cost of construction of roads within the state as provided by an act of congress, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes," approved July eleventh, nineteen hundred and sixteen, said sum to be used for the payment in the first instance of the federal government's share of estimates rendered during the progress of such construction, and the state shall be reimbursed by the federal government for such advance payments upon such estimates under the contract upon which such payments are made. The comptroller is hereby authorized to receive from the federal government the amounts so advanced upon such contracts, and to deposit the funds with the state treasurer to the credit of this appropriation, so that upon the completion of such contracts contemplated under the act of the federal government the state shall be reimbursed for the full amount of any and all such advance payments.

L. 1917, ch. 388.

**AN ACT** making an appropriation for completing the bridge over Rondout creek, between Sleightsburgh and the city of Kingston, constituting a part of the state highway route number three.

Section 1. The sum of one hundred and thirty-nine thousand dollars (\$139,000), or so much thereof as may be needed, is hereby appropriated for completing the bridge over Rondout creek between Sleightsburgh and the city of Kingston constituting a part of state highway route number three. Such work shall be done in the manner prescribed by and subject to the provisions of the highway law.

L. 1918, ch. 563.

**AN ACT making appropriations for distribution of moneys received from a bonding company in connection with the improvement of county highway nine hundred and seventy-six, in Wyoming county.**

Section 1. Of the sum of eighteen thousand three hundred and forty-seven dollars and twenty-nine cents (\$18,347.29) recovered by the state of New York in an action in the supreme court from the United States Fidelity and Guarantee Company of Baltimore, Maryland, as the excess cost occasioned by the failure of Aikenhead, Bailey and Donaldson, Incorporated, to complete, in accordance with the terms of their contract with the state of New York, county highway number nine hundred and seventy-six, in Wyoming county, and deposited in the miscellaneous receipts highway improvement fund, there is hereby appropriated from said fund to the attorney-general's department of the state of New York the sum of two hundred and twenty-two dollars and twelve cents (\$222.12), being the legal costs and expenses recovered in said judgment. There is also hereby appropriated from said fund the sum of nine thousand and sixty-two dollars and fifty-seven cents (\$9,062.57) to the county of Wyoming to reimburse said county for moneys advanced by it for the purpose of aiding in the completion of the improvement of said county highway number nine hundred and seventy-six. There is also hereby appropriated from said fund the sum of nine thousand and sixty-two dollars and fifty-eight cents (\$9,062.58), which said sum is hereby made available to the draft or requisition of the state department of highways, to be used only by said department for the purpose of paying wholly or in part for the state's share of the cost of the improvement of county highways in the county of Wyoming in accordance with article six of the highway law.

L. 1919, ch. 78.

**AN ACT making an appropriation for highway improvement purposes.**

Section 1. The sum of one hundred and seventeen thousand four hundred and thirty dollars and thirty-four cents (\$117,430.34), being the unexpended balance of Essex county's share of the funds derived from the second referendum or bond issue for state road construction in accordance with chapter two hundred and ninety-eight of the laws of nineteen hundred and twelve, is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of said chapter. The moneys

so appropriated shall be expended for the construction and improvement of public highways, including highways being constructed by appropriations from the general treasury after such appropriations have been expended, in accordance with the provisions of chapter six hundred and twenty-six of the laws of nineteen hundred and eighteen, being section six-a of chapter two hundred and ninety-eight of the laws of nineteen hundred and twelve as amended. The sum of fifty-eight thousand seven hundred and fifteen dollars and seventeen cents being one-half of the moneys hereby appropriated are hereby made available for highway improvement in Essex county and are to be expended within said county on the connection between state route number twenty-two in Washington county and state route number twenty-two-b in Essex county.

L. 1919, ch. 222.

# GENERAL HIGHWAY TRAFFIC LAW

L. 1917, Chap. 655.

**AN ACT** to provide for the uniform regulation of vehicles, animals and pedestrians on any public highway in the state, constituting chapter seventy of the consolidated laws.

## CHAPTER 70 OF THE CONSOLIDATED LAWS. GENERAL HIGHWAY TRAFFIC LAW.

Article 1. Short title; definitions; application (§§ 1-3).

2. Use of highways regulated (§§ 10-22).

3. Penalties; miscellaneous provisions (§§ 30-32).

### ARTICLE 1.

#### SHORT TITLE; DEFINITIONS.

Section 1. Short title.

2. Definitions.

3. Application.

Section 1. **Short title.** This chapter shall be known as the "general highway traffic law."

§ 2. **Definitions.** The following terms whenever used in this chapter, except as otherwise specifically indicated, shall be defined to mean and shall be held to include each of the meanings herein below specifically set forth, and any such term used in the singular number shall be held to include the plural:

"Public highway" shall include any highway, country road, state highway, state road, public street, avenue, alley, park, parkway, or driveway, in any city, town or village within the state.

"Street" or "roadway" shall include that part of the public highway or a bridge intended for vehicles.

"Curb" shall include the boundaries of the street, whether marked by curb stone or not so marked.

"Crossing" shall include all crossings marked by a pavement or otherwise and the extension of the sidewalk space across intersecting streets.

"Street intersection" shall include the area bounded by the side lines, real or projected, of two or more streets which meet or cross each other.

"Vehicle" shall include a horse and every kind of conveyance, except a baby carriage, a street surface car and a push cart.

"Motor vehicle" shall include all vehicles propelled by any power other than muscular power, which do not run upon a rail or rails.

"Motorcycle" shall include all motor vehicles designed to travel on not more than three wheels in contact with the ground.

"Horse" shall include all domestic animals used as draught animals or beasts of burden.

"Driver" shall include a person who propels or operates or who is in charge of a vehicle.

"Pedestrian" shall include all persons making use of public highway for foot passage.

"One-way traffic" is traffic restricted to one direction.

"Parking space" shall mean that part of any street designated by local ordinance or regulation as a place for the standing of vehicles.

"City" or "village" shall include that portion of a county which is within the limits of an incorporated city or village, and "town" shall include all portions of the county outside the limits of an incorporated city or village.

"Reckless driving" for the purpose of this chapter shall include driving or using a vehicle or street surface car or any appliance or accessory thereof in a manner which unnecessarily interferes with the free and proper use of the highway, or unnecessarily endangers users of the highway.

"Safety zone" shall mean such space within a street or public highway as shall be established for persons on foot.

§ 3. Application. The provisions of this chapter shall not apply to the city of New York.

## ARTICLE 2.

## USE OF HIGHWAYS REGULATED.

## Section 10. Pedestrians.

11. Stopping, turning, passing and waiting of vehicles.
12. Right of way and operation of vehicles.
13. Signals.
14. Speed regulations.
15. Parking, safety zones and cab stands.
16. Loading and unloading vehicles.
17. Vehicles.
18. Street surface cars.
19. Motorcycles, bicycles and similar vehicles.
20. Miscellaneous regulations.
21. Duties of local authorities.
22. Powers of local authorities.

§ 10. Pedestrians. Pedestrians walking upon the traveled part of a street and not the sidewalk shall, when meeting or passing vehicles, be subject to and comply with the rules governing vehicles as to meeting, turning out and passing, except as to signals.

§ 11. Stopping, turning, passing, and waiting of vehicles. 1. A vehicle turning into another street to the right shall turn the corner as near the right-hand curb as practicable.

2. A vehicle turning to the left into another street, shall, before turning, pass to the right of and beyond the center of the intersecting streets; provided, however, that if directed by a traffic officer the vehicle shall pass in front of instead of around the point of intersection.

3. In turning a corner of intersecting streets a vehicle shall be driven with extreme caution and under control.

4. A vehicle passing around a circle shall keep to the right from entrance to exit.

5. Vehicles turning around or crossing from one side of the street to another, except for the purpose of passing other vehicles or because of dangers in the streets, shall do so by turning to the left so as to head in the general direction of traffic after they have crossed the street.

6. A vehicle in overtaking or meeting a street surface car which has been stopped for the purpose of receiving or discharg-

ing a passenger or passengers, shall not pass or approach within seven feet of such car so long as such car is receiving or discharging passengers, except that in a city having a million or more population such vehicle shall not pass or approach within eight feet of such car except as indicated by a safety zone. In passing any street surface car extreme care must be used by the driver.

7. On an avenue, street or boulevard divided longitudinally by a parkway, walk, space for street surface cars, viaduct, zone of safety, cab stand, parking space or other similar obstructions, vehicles shall keep to the right of such division.

§ 12. **Right of way and operation of vehicles.** 1. When in the performance of duty the following vehicles shall have the right of way: United States mail, police, fire, fire patrol, bureau of buildings, emergency repair of public service corporations, ambulances and the military; but this shall not relieve the driver or owner of any such vehicle from consequences of the arbitrary or careless exercise of this right for injuries inflicted.

2. No vehicle and no street surface car, except as provided in subdivision one of this section, shall be driven through a procession, except with the permission or by order of a police officer. If the procession takes more than five minutes to pass, it shall be broken and traffic allowed to go through.

3. Two vehicles which are passing each other in opposite directions shall have the right of way, and, except in cities and villages, no other vehicle to the rear of either of such two vehicles shall pass or attempt to pass such two vehicles while they are passing each other.

4. Every driver of a vehicle approaching the intersection of a street or public road shall grant the right of way at such intersection to any vehicle approaching from his right; provided, that wherever traffic officers are stationed they shall have full power to regulate traffic.

5. A vehicle must not be so driven as to impede or obstruct the progress of the apparatus of the fire department or any official or employee of a city, town or village in the discharge of his duty at a fire. The driver of a vehicle must not drive through or within the established fire lines or over a line of fire hose. On the approach of fire apparatus, as evidenced by suitable and continuous warning or by street signals operated from fire headquarters, visible or audible one to another, indicating the route of the

apparatus, the driver of a vehicle must immediately draw up such vehicle as near as practicable to the right-hand curb and parallel thereto, and bring it to a standstill, and the driver of a street car must immediately stop his car and keep it stationary until the apparatus has passed.

6. The vehicle having the middle line of the highway on its left shall have the right of way. In meeting both vehicles shall keep to the right, so as to insure safe passage, and this without regard to the middle line of the highway. Slowly moving vehicles must move as near to the curb as practicable; rapidly moving vehicles must occupy the space lying immediately next to and parallel with the middle of the highway.

7. A vehicle overtaking another vehicle shall pass on the left side of the overtaken vehicle and not pull over to the right thereof until entirely clear of it.

8. The driver of an overtaking vehicle shall signal his desire to pass an overtaken vehicle by a blast or stroke of the horn or other signaling device, and thereupon it shall be the duty of the overtaken vehicle, if possible, to turn to the right so as to allow the overtaking vehicle a reasonable space in which to pass, or to warn by signal the impossibility of such passage.

9. It shall be unlawful for any person to drive a vehicle within a safety zone.

10. In all passing and overtaking such assistance shall be given by the occupants of each vehicle respectively to the other as the circumstances shall demand and either request by voice or signal, and each shall exercise care and caution to get clearance and avoid accident.

11. No vehicle shall emerge from an alley, stable, garage or driveway except slowly and under control of the driver who shall give a proper warning by voice or signaling device to passing vehicles and pedestrians.

12. The use of a motor muffler cut-out is prohibited on any highway within the limits of a city or incorporated village.

13. Gong and siren whistles shall not be used on any vehicle other than ambulances and vehicles operated by a police department, fire department, sheriff, authorized public utility company when on emergency calls and the United States mail and military services.

14. A person operating or driving a motor vehicle shall on signal by raising the hand or otherwise from a person driving,

leading or riding a horse or horses or other draft animals, bring such motor vehicle immediately to a stop, and if traveling in the opposite direction remain stationary so long as may be reasonable to allow such horse or animal to pass, and if traveling in the same direction use reasonable caution in thereafter passing such horse or animal.

§ 13. **Signals.** 1. Before turning to the right or left and, except in an emergency, before decreasing speed or stopping the driver shall warn those following either by holding his arm straight out, horizontal and at right angles to the car, or by operating an adequate mechanical signal device.

2. Upon approaching a pedestrian who is on the traveled part of any street and not upon a sidewalk, and upon approaching an intersecting street or a curve or a corner in the street where the driver's view is obstructed and where a traffic officer is not on duty, every driver of a vehicle shall slow down the same and give a timely and sufficient signal with his voice, horn or other signaling device.

3. The driver of a vehicle shall before turning while in motion or from a standstill or changing the course of such vehicle first see that there is sufficient space to make such movement in safety, and shall give a visible or audible signal to the traffic officer, if there be such, or to drivers of other vehicles following of his intentions to make such movement by signaling as provided in subdivision one of this section, and where a police officer is in charge of the traffic indicate to him the direction in which the vehicle is to be turned.

4. Before backing any vehicle the driver shall see that the way is clear and shall give adequate warning, and shall, while backing, exercise due vigilance to prevent accident.

§ 14. **Speed regulations.** 1. Reckless driving is prohibited. Every person violating this provision shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars for the first offense; and by a fine not exceeding one hundred dollars or imprisonment not exceeding six months or by both such fine and imprisonment in the discretion of the court for a second or subsequent offense.

2. Upon approaching a bridge or in passing a public hospital, fire house or a school the driver of any vehicle or street surface car shall proceed with extreme care and with vehicle or street

surface car under control, provided local authorities have legible and visible signs posted, warning drivers of their approach to a bridge, fire house, public hospital or school building.

3. Street surface cars shall be brought to a full stop and all other vehicles shall use extreme caution when approaching a crossing or place designated by the sign "Traffic Point." Local authorities shall have authority from time to time to designate by ordinance, rule or regulation such crossing or other places at which such signs shall be placed.

§ 15. **Parking, safety zones and cab stands.** 1. The police commissioner, common council, board of aldermen, commission or any other body having charge of the streets of a city and the trustees of a village are authorized to designate by ordinance or regulation such safety zones, parking spaces and cab or taxicab stands in the public streets as are, or shall be required, for the safety and convenience of the citizens and inhabitants of the city or village, and shall mark and indicate by suitable stationary and portable signs the location of such zones, spaces and stands and all persons driving, operating or having under their control any vehicle of any kind whatsoever shall obey the rules and regulations prescribed by such local authorities for safety zones, parking and cab stands, but nothing herein contained shall be construed as superseding or conflicting with section four hundred and forty-four of the penal law.

2. The driver or person in charge of a motor vehicle, before leaving the same standing unattended on the public streets, shall apply the emergency brakes. No person without authority of such driver or person in charge shall climb upon such vehicle or sound any horn or signaling device, or attempt to manipulate any of the machinery or set such vehicle in motion, or in any way interfere with such vehicle; provided, however, that for the purpose of getting away from the place of standing, a driver may move another vehicle which is so placed that he cannot get his vehicle out.

3. No person shall deface, injure, move or interfere with any sign, post, standard or any signaling device sanctioned, installed, or placed by local authorities for the purpose of directing, restricting or regulating traffic or establishing zones.

4. When a vehicle stands on a steep incline it shall be so placed that when the brake is released it will run into the curb.

5. Any vehicle when stopped parallel to the curb shall stop as near to the curb as practicable, with wheels, both front and rear, not more than six inches from the curb.

6. No vehicle shall stop with its left side to the curb, except in such streets as may be designated as one-way traffic streets and where road excavation of other legalized obstruction prevent the operation of this regulation.

7. Except in an emergency or when advised to do so by a police officer, no vehicle shall be stopped or left standing within the intersection of any cross street; within ten feet of any crosswalk or street crossing or alley corner, except where traffic officers are on duty; within ten feet of any fire hydrant unless the vehicle is actually in charge of some person capable of driving it; in such position as to prevent another vehicle already stopped near the curb from moving away; in front of or within fifteen feet of either side of the entrance to any theatre, auditorium, or other building where large assemblages of persons are being held, except to take on or to discharge passengers or freight and then only for such length of time as is necessary for such purpose; in any portion of any street where street surface cars stop to receive or discharge passengers, except as otherwise provided.

8. No vehicle shall be stopped in any street except close to the curb thereof, unless in case of emergency or to allow another vehicle, street surface car or pedestrian to cross its path. This regulation shall not be construed to prevent local officials designating portions of streets as parking spaces.

9. A person in charge or control of any vehicle standing in any street shall cause the same to be moved immediately at the request of the driver of another vehicle, the lawful movement of which is obstructed or delayed by the standing vehicle. A vehicle waiting at the curb shall promptly give place to a vehicle about to take on or discharge passengers.

§ 16. **Loading and unloading vehicles.** Except at parking spaces or when authorized so to do by ordinance or regulation no vehicle shall remain backed to the curb except it be actually loading or unloading and then for no longer time than the actual loading and unloading reasonably requires.

§ 17. **Vehicles.** 1. A vehicle when loaded with any material extending at least four feet beyond its rear shall be provided with a red flag by day on the extreme rear end of such load.

2. No person shall drive any vehicle so constructed or closed in as to prevent the driver from having a clear view ahead and at the sides of such vehicle.

3. It shall be unlawful to make repairs to any vehicle in any street or public place in a city except in an emergency.

4. No person shall drive or conduct any vehicle which is known to him to be in such condition, so constructed or so loaded as to break down or become stalled.

5. Before removing any part of any vehicle, or any part of any harness whose removal is likely to cause accident or permit a horse or horses attached to said vehicle to run away, the horse or horses shall first be unhitched from said vehicle by the person in charge.

6. The use of a vehicle in any city or village is prohibited when it is so loaded with iron or other material as to create loud noises while in transit.

7. A vehicle unless confined to tracks shall not tow more than one other vehicle, and the connection between the two vehicles shall not be longer than sixteen feet, except that nothing in this clause shall prevent the use of more than one trailer. Each towed vehicle, except a trailer, shall have an attendant.

§ 18. **Street surface cars.** 1. During blockades or stoppages a clear space of ten feet shall be kept open between street cars opposite any alley or the center of the block if there be no alley.

2. Subject to the provisions of subdivision one of section twelve, and except by order of a member of the police force in the discharge of his duty, street cars shall have the right of way between cross streets over all other vehicles. Every street surface car shall by any signal approved by the public service commission, warn all traffic in its rear of the stopping or turning of such car.

3. The driver of any vehicle proceeding upon the tracks in front of a street car shall turn out as soon as possible upon signal of the operator of the street car.

§ 19. **Motorcycles, bicycles and similar vehicles.** 1. No person in any city shall ride any motorcycle, bicycle or other vehicle propelled by the hands or feet of the rider along or upon any public sidewalk or footpath intended for the use of pedestrians. This section shall not apply to children under ten years of age

and to persons who cannot walk by reason of being invalids or crippled.

2. No person shall drive or ride a motor vehicle, motorcycle, or bicycle in the streets of any city, town or village without having a hand on the handle-bars or steering device.

3. The driver of a two-wheeled motorcycle or a bicycle shall not carry any other person thereon, except on a seat securely fastened to the machine in the rear of the driver and provided with foot rests and hand grips.

4. Bicycles shall be provided with a bell which may be heard at least one hundred feet distant, also a lamp of such illuminating power as to be visible two hundred feet ahead. Such lamp shall be lighted whenever the vehicle is ridden at any time between one-half hour after sunset and one-half hour before sunrise.

§ 20. **Miscellaneous regulations.** 1. No person shall ride upon the rear of any vehicle without the consent of the driver nor with any part of his body protruding, nor shall any person hang on to any street car or vehicle whatsoever.

2. On all automobiles requiring cranking from the street the driver thereof shall cause the brakes to remain set until after the engine is started.

3. No races or contests for speed shall be held upon any street without the permission of the authorities of the state, city, town or village having jurisdiction of such street and unless the same is fully and efficiently patrolled for the entire distance over which such race or contest for speed is to be held.

4. No person shall coast with handsleds, bobs, carts or other vehicles, on wheels or runners upon any public sidewalk in any city; nor shall any person coast with handsleds, bobs or carts or other vehicles on wheels or runners upon any public street of the city except upon such streets as may be designated by the common council, board of aldermen or commission thereof.

5. No motor vehicle shall be operated in such a way as to emit unnecessary smoke or unnecessary offensive vapors within the streets of any city, town or village.

6. No person shall fail, neglect or refuse to comply with any lawful instruction, directions or regulations, displayed upon post,

standard, sign or device installed or placed for the regulation, direction or instruction of traffic in any public street.

§ 21. **Duties of local authorities.** It shall be the duty of the members of the police department of every city, town or village to enforce the provisions of this chapter strictly and impartially.

§ 22. **Powers of local authorities.** 1. Police commissioners, common councils, boards of aldermen, commissions or any other official body having charge of the streets in cities and boards of trustees in villages are hereby authorized to designate streets and ways in which vehicles shall pass in one direction. All vehicles shall proceed in such streets and ways only as the signboards and conspicuously displayed and visible regulation upon such street and ways shall define. The direction in which vehicles may proceed shall be so conspicuously marked with signs or signals as to indicate the rule and regulation in regard thereto and the direction in which all vehicles shall so travel.

2. Whenever the police department of a city or the president of a village shall deem it advisable during a fire or at the time of an accident or special emergency and for such period of time only as is necessitated thereby, for the public safety or convenience, temporarily to close any street or part thereof to vehicular traffic, or to vehicles of a certain description, or to divert the traffic thereof, or to divert or break a course of pedestrian traffic, said department or official shall have power and authority so to do. Local authorities may also by general rule, regulation or ordinance exclude vehicles used solely or principally for commercial purposes from any park or part of a park system where such general rule, regulation or ordinance is applicable equally and generally to all other vehicles used for the same purpose; provided that at the entrance or at each entrance if there be more than one, to such park from which vehicles are so excluded, there is posted a sign plainly legible from the opposite side of the highway on which said park opens, plainly indicating the restriction.

3. In addition to other powers delegated by this chapter, and to restrictions hereinafter provided, local authorities in cities are hereby empowered to make, enforce and maintain such additional reasonable ordinances, rules and regulations governing traffic as

special local conditions may make necessary, and to prescribe penalties therefor, provided proper notices of such regulations be posted conspicuously upon the streets to which such regulations apply. Subject to this chapter the power now or hereafter vested in local authorities to license and to regulate the use of highways for processions and essemblages shall remain in full force and effect, and all ordinances, rules and regulations which may have been or which may be hereafter enacted in pursuance of such powers shall remain in full force and effect.

4. Local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation in any way in conflict with, contrary to, or inconsistent with the provisions of this chapter, or any general law affecting vehicles which has or hereafter may be enacted, and no such ordinance, rule or regulation of such local authorities now in force or hereafter enacted shall have any force or effect, provided that nothing in this chapter shall impair the validity or effect of any ordinance regulating the speed of motor vehicles heretofore or hereafter made, adopted or prescribed by cities of the first class.

### ARTICLE 3.

#### PENALTIES; MISCELLANEOUS PROVISIONS.

##### Section 30. Penalties.

31. Publication and distribution of regulations.

32. When to take effect.

§ 30. Penalties. 1. Except as otherwise provided, any person violating any provision of this chapter may upon conviction thereof be punished by a fine not exceeding ten dollars for the first offense and not less than ten dollars or more than twenty-five dollars for the second offense, or by imprisonment for not less than two or more than fifteen days. The third or any subsequent offense within one year shall be a misdemeanor and upon conviction therefor may be punishable by a fine not exceeding one hundred dollars or imprisonment not exceeding six months or both such fine and imprisonment in the discretion of the court.

2. All fines, penalties and forfeitures, collected under this act in a city, town or village shall be paid to the said city, town or village and credited to the general fund.

§ 31. Publication and distribution of regulations. This chapter shall be printed in pamphlet form by the secretary of state,

and a copy thereof either mailed or given by him to each person, firm or corporation to whom a motor vehicle license or chauffeur's license is issued during the period of one year from the time this chapter takes effect, and subsequently to each such person, firm or corporation to whom a license has not previously been issued during the period mentioned. The police department of each city and village shall see that this chapter is posted in all public stables, and garages and street car barns and at hack, cab and express stands and shall keep copies of it at all other stations and issue it upon application.

§ 32. **When to take effect.** This chapter shall take effect immediately.

L. 1917, ch. 655.



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